DECISIONS

OF THE

RAILROAD COMMISSION

OF THE

STATE OF CALIFORNIA

VOLUME VIII

SEPTEMBER 1 TO DECEMBER 31, 1915

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

DECISION No. 2727.

RIVERSIDE PORTLAND CEMENT COMPANY

vs.

SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY ET AL.

Case No. 539.

Decided September 1, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

Complainant in the above entitled proceeding filed its application for rehearing on this Commission's order of March 5, 1915. Shortly thereafter complainant's counsel gave notice that his presence was necessary at a hearing before the Interstate Commerce Commission in Washington, D. C., and requested that action on the application be postponed. The request was granted and the report on the application accordingly delayed.

No new matter is presented in said application. The points now raised were considered in the decision heretofore rendered, and no good cause appears why a rehearing should be granted.

ORDER.

It is hereby ordered that said application be, and the same is hereby, denied.

Dated at San Francisco, California, this 1st day of September, 1915.

Decisions Nos. 2728, 2729, 2730, grade crossings; not printed. See end of volume.

DECISION No. 2731.

IN THE MATTER OF THE REORGANIZATION OF THE UNITED LIGHT AND POWER COMPANY.

Application No. 1542.

Decided September 1, 1915.

Applicants petition for the approval of a certain supplemental agreement which provides for the deposit of certain bonds of the United Light and Power Company and notes, of the United Light and Power Company of New Jersey with

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the Anglo-California Trust Company, such bonds and notes to be exchanged for bonds of the Consolidated Electric Company which latter company shall have control thereof. Application granted.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL OPINION.

THELEN, *Commissioner.*

This Commission has heretofore issued its order and supplemental orders authorizing United Light and Power Company of California, United Light and Power Company of New Jersey, Consumers Light and Power Company, Central Oakland Light and Power Company, Equitable Light and Power Company and Southside Light and Power Company to transfer their properties to Consolidated Electric Company; authorizing Consolidated Electric Company to issue stocks and bonds; and authorizing Great Western Power Company to guarantee both as to interest and principal the payment of said bonds.

This Commission has also issued its order approving the trust indenture under the terms of which the Consolidated Electric Company proposed to issue its bonds.

In the third supplemental application, filed August 10, 1915, applicants report that the holders of more than 90 per cent of the gold notes of the United Light and Power Company of New Jersey and the holders of all but forty-six of the bonds of United Light and Power Company of California have deposited their securities in accordance with the proposed transfer of property and issue of securities heretofore authorized by this Commission in this proceeding.

The applicants state further that in order to put the plans heretofore approved into effect, it will be necessary to enter into a new and supplemental agreement. This agreement is intended to give Consolidated Electric Company power to carry out the proposed plan.

Applicants accordingly submitted as Exhibit "A," attached to the third supplemental application, a form of agreement which they ask this Commission to approve. On August 31, 1915, applicants submitted to this Commission for approval an amended copy of said Exhibit "A."

This agreement is between Consolidated Electric Company, Great Western Power Company, Anglo-California Trust Company and "such persons, firms or corporations as shall accept the general mortgage bonds of the electric company during the term of the existence of the trust hereby created."

Under the terms of the agreement, the bonds of the United Light and Power Company of California and the three year collateral trust gold notes of United Light and Power Company of New Jersey, to be

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exchanged for bonds of Consolidated Electric Company, are to be placed in trust with Anglo-California Trust Company; the Consolidated Electric Company at the same time to issue its bonds to the persons who have deposited their securities. The agreement also gives power to the Consolidated Electric Company, controlling the bonds deposited with the Anglo-California Trust Company, to take such steps as may be necessary to clear the properties from existing and outstanding liens.

I recommend that the application be granted and submit the following form of order:

FIFTH SUPPLEMENTAL ORDER.

United Light and Power Company of California, Equitable Light and Power Company, Consumers Light and Power Company, Southside Light and Power Company, Central Oakland Light and Power Company, United Light and Power Company of New Jersey, Consolidated Electric Company, and Great Western Power Company having asked this Commission to approve an agreement referred to in the foregoing opinion and filed in connection with this third supplemental application and marked "Exhibit A, Amended," and it appearing to this Commission that said agreement should be approved,

It is hereby ordered that the same be, and it is hereby, approved.

The foregoing fifth supplemental opinion and order are hereby approved and ordered filed as the fifth supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of September, 1915.

DECISION No. 2732.

IN THE MATTER OF THE APPLICATION OF NEWPORT LAND COMPANY TO CONVEY CERTAIN PROPERTY TO PACIFIC LIGHT AND POWER CORPORATION.

Application No. 1800.

Decided September 1, 1915.

REPORT OF THE COMMISSION.

Newport Land Company having applied to this Commission for authority to transfer to Pacific Light and Power Corporation, in accordance with the form of deed attached to the application in this proceeding and marked "Exhibit A," the following described property, being an

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electrical distributing system situated on Balboa Island, Orange County, California:

5,195′ No. 6 D. B. W. P. copper wire (sec.) 519.5 pounds.
13,474′ No. 8 D. B. W. P. copper wire 889 pounds.
339′ No. 10 D. B. W. P. copper wire 15.6 pounds.
2,033′ No. 8 T. B. W. P. copper wire 152.5 pounds.
1,050′ No. 10 D. B. W. P. copper wire (pri) 48 pounds.
2,797′ No. 8 D. B. W. P. copper wire (services) 185 pounds.
3,524′ No. 10 D. B. W. P. copper wire (services) 162 pounds.
206′ No. 6 T. B. W. P. copper wire (services) 23 pounds.
1,313′ No. 8 T. B. W. P. copper wire (services) 98.5 pounds.
350′ No. 10 T. B. W. P. copper wire (services) 18.5 pounds.
975′ No. 8 T. D. W. P. copper wire (services) in stock 73 pounds.
149 pounds junk W. P. & R. C. copper wire.
208 pounds D. G. D. P. glass insulators.
100 pounds D. G. D. P. glass insulators (stock).
135 pounds 1½″ x 9″ wood pins.
2 35′–7″ round cedar poles.
2 5 K. W. 2200–1100/220–110 volt, 60 cyc. G. E. type H, form K, trans. No. 9496413—No. 1022048.
1 5 K. W. 2200–1100/220–110 volt, 60 cyc. 1-phase trans. Al/Ch. No. M2699.
1 30 K. W. 2100–1050/420–210 volt, 7200–16000 Alts., St. No. 9954, West 'h type OD, No. 113903.
37 5 amp. 110 volt, G. E., 1–10, 60 cyc. meters.
6 10 amp. 110 volt, G. E., 1–10, 60 cyc. meters.
1 25 amp. 110 volt, G. E., 1, 60 cyc. meters.
2 5 amp. 100 volt, West. 'h OA 60 cyc. meters.
2 5 amp. 100 volt, West. CB 60 cyc. meters.
1 15 amp. 100 volt, West. CB 60 cyc. meters.

And Pacific Light and Power Corporation having joined in the application, and it appearing to the Commission that the application should be granted,

It is hereby ordered that said application be, and the same is hereby, granted.

Dated at San Francisco, California, this 1st day of September, 1915.

Decision No. 2733.

IN THE MATTER OF THE APPLICATION OF SIERRA POWER COMPANY TO CONVEY CERTAIN PROPERTY TO PACIFIC LIGHT AND POWER CORPORATION.

Application No. 1799.

Decided September 1, 1915.

Report of the Commission.

Sierra Power Company having applied to this Commission for authority to transfer to Pacific Light and Power Corporation, in accord-

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ance with the form of deed attached to the application in this proceeding and marked "Exhibit B," the following described property:

First—That certain real property situated in the county of Los Angeles, State of California, particularly described as follows, to wit:

Beginning at a point in the south line of section 36, township 2 north, range 8 west, San Bernardino base and meridian, one hundred (100) feet east of an alder tree sixteen inches in diameter blazed on the north side, said alder tree being located on said section line and being at the foot of the west wall of the San Antonio Canyon; thence running north 31° 55′ west, 471.4 feet; thence east 450 feet; thence south 7° 14′ west, 403.5 feet; thence west 150 feet to the place of beginning.

Second—That certain real property situated in the county of Los Angeles, State of California, and particularly described as follows, to wit:

Lying and being in the city of Pomona, county and State aforesaid, and being lot thirteen (13) of L. D. Connor's Subdivision of block one hundred and fifty-three (153) of the city of Pomona, aforesaid, as per map, recorded in Book 24, page 20, Miscellaneous Records, recorder's office of Los Angeles County aforesaid, being the same property granted February 29, 1892, by C. E. Connor and Rose Connor, grantors, unto the San Antonio Light and Power Company, by deed recorded in Book 767, page 296 of Deeds, recorder's office of Los Angeles County aforesaid.

Together with all water, water rights, and the right of diversion of the waters of San Antonio Creek and conducting them to the power house situated upon the property first herein described, and to use the same for the development and generation of electric power;

Together with all water rights, rights of way, easements, franchises, conduits, pole lines, canals, ditches, flumes, distributing systems, transmission systems, generators, dynamos, fixtures, machinery, tools and implements of every kind and character now owned by the Sierra Power Company or in which it has any interest;

Together with all the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and together with all the rights, privileges, easements, rights of way, water rights, right for the conducting of water, rights of way for pipe lines, roads, and all other privileges, estates and easements granted to the party of the first part under and by virtue of a certain deed made by the San Antonio Water Company to the San Antonio Light and Power Company, dated the 11th day of June, 1900, and subject to all the conditions in said deed contained.

Also the following personal property, to wit:

2 1,000 light Stillwell regulators.
80 kilowatt capacity convertors in Pomona.
1 15 kilowatt Westinghouse transformer.

4,800 feet of pressure pipe divided as follows:

2,800 feet of 20 inch.
1,400 feet of 30 inch.
600 feet of 24 inch.

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electrical distributing system situated on Balboa Island, Orange County, California:

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975' No. 8 T. D. W. P. copper wire (services) in stock 73 pounds.
149 pounds junk W. P. & R. C. copper wire.
208 pounds D. G. D. P. glass insulators.
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2 5 amp. 100 volt, West. CB 60 cyc. meters.
1 15 amp. 100 volt, West. CB 60 cyc. meters.

And Pacific Light and Power Corporation having joined in the application, and it appearing to the Commission that the application should be granted,

It is hereby ordered that said application be, and the same is hereby, granted.

Dated at San Francisco, California, this 1st day of September, 1915.

DECISION No. 2733.

IN THE MATTER OF THE APPLICATION OF SIERRA POWER COMPANY TO CONVEY CERTAIN PROPERTY TO PACIFIC LIGHT AND POWER CORPORATION.

Application No. 1799.

Decided September 1, 1915.

REPORT OF THE COMMISSION.

Sierra Power Company having applied to this Commission for authority to transfer to Pacific Light and Power Corporation, in accord-

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ance with the form of deed attached to the application in this proceeding and marked "Exhibit B," the following described property:

First—That certain real property situated in the county of Los Angeles, State of California, particularly described as follows, to wit:

Beginning at a point in the south line of section 36, township 2 north, range 8 west, San Bernardino base and meridian, one hundred (100) feet east of an alder tree sixteen inches in diameter blazed on the north side, said alder tree being located on said section line and being at the foot of the west wall of the San Antonio Canyon; thence running north 31° 55′ west, 471.4 feet; thence east 450 feet; thence south 7° 14′ west, 403.5 feet; thence west 150 feet to the place of beginning.

Second—That certain real property situated in the county of Los Angeles, State of California, and particularly described as follows, to wit:

Lying and being in the city of Pomona, county and State aforesaid, and being lot thirteen (13) of L. D. Connor's Subdivision of block one hundred and fifty-three (153) of the city of Pomona, aforesaid, as per map, recorded in Book 24, page 20, Miscellaneous Records, recorder's office of Los Angeles County aforesaid, being the same property granted February 29, 1892, by C. E. Connor and Rose Connor, grantors, unto the San Antonio Light and Power Company, by deed recorded in Book 767, page 296 of Deeds, recorder's office of Los Angeles County aforesaid.

Together with all water, water rights, and the right of diversion of the waters of San Antonio Creek and conducting them to the power house situated upon the property first herein described, and to use the same for the development and generation of electric power;

Together with all water rights, rights of way, easements, franchises, conduits, pole lines, canals, ditches, flumes, distributing systems, transmission systems, generators, dynamos, fixtures, machinery, tools and implements of every kind and character now owned by the Sierra Power Company or in which it has any interest;

Together with all the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and together with all the rights, privileges, easements, rights of way, water rights, right for the conducting of water, rights of way for pipe lines, roads, and all other privileges, estates and easements granted to the party of the first part under and by virtue of a certain deed made by the San Antonio Water Company to the San Antonio Light and Power Company, dated the 11th day of June, 1900, and subject to all the conditions in said deed contained.

Also the following personal property, to wit:

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80 kilowatt capacity convertors in Pomona.
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4,800 feet of pressure pipe divided as follows:

2,800 feet of 20 inch.
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Southern California Gas Company, instead of $684,000.00 of bonds as originally authorized.

It appears also that instead of authorizing this issue of $683,000.00 of bonds in one block to Southern California Gas Company, this item should be separated into two amounts consisting of $660,000.00 of bonds and a second amount of $23,000.00 of bonds.

The original order provided for the issue of $23,000.00 of bonds to the Southern California Gas Company as payment to the Southern California Gas Company of the cost of obtaining its natural gas contracts, this item consisting very largely of legal costs.

It appears that the Southern California Gas Company is now indebted in the sum of $20,833.57, representing the cost of these contracts, and for the acquisition of which Midway Gas Company was heretofore authorized to issue $23,000.00 of bonds.

It is now proposed that Midway Gas Company assume and agree with the Southern California Gas Company to pay this amount of $20,833.57 as part consideration for the transfer of the property of the Southern California Gas Company to it, and that the order authorize the Midway Gas Company to issue $23,000.00 of its bonds for the purpose of discharging this obligation.

If the parties in interest desire such an arrangement I see no reason why this Commission's order may not be modified so as to provide for an issue of $660,000.00 of bonds to Southern California Gas Company in exchange for its properties and a further issue by Midway Gas Company of $23,000.00 of bonds under the terms of an agreement by which Midway Gas Company shall obligate itself to discharge the indebtedness of $20,833.57 and receive in return the assignment of the natural gas contracts.

It will be necessary also to make some change in the amount of preferred stock heretofore authorized to be issued by Midway Gas Company for the purpose of acquiring the property of the Northern Exploration Company. This amount of stock was originally placed at $405,000.00 par value, the stock to be issued at 80 per cent of par to Northern Exploration Company in return for its properties and rights of an original cost of $324,000.00. This original cost was determined by the applicant by taking the actual outlay of money by Northern Exploration Company and adding thereto interest at the rate of 6 per cent up to April 1, 1915.

I find, however, that Northern Exploration Company has heretofore had a return upon its investment and this interest item should, therefore, be eliminated. The effect would be to reduce the amount of preferred stock heretofore authorized to be issued to Northern Exploration Company from $405,000.00 to $359,800.00, or, in round numbers, to $360,000.00.

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It appears that under the contract between the Southern California Gas Company and the Southern Pacific Land Company and others described in the opinion of this Commission heretofore filed herein, the Southern California Gas Company is required to purchase from the Southern Pacific Land Company and other parties to the contract a minimum average amount of 10,000,000 cubic feet of gas per day, provided that the lands covered by the contract shall not become exhausted to such an extent as to make it impracticable to obtain that amount of gas from them by the exercise of reasonable diligence. The contract provides that the gas company shall, at its own expense, develop the lands for the production of gas.

The Southern California Gas Company entered into a contract with the Northern Exploration Company to do the work of development for it not only in the fields covered by contract between the Southern Pacific Land Company and others and the Southern California Gas Company above mentioned, but also in any other fields the right to develop which might, during the period covered by this development contract, be acquired by Southern California Gas Company.

It was provided that the Southern California Gas Company should pay to the Northern Exploration Company as consideration for doing this work of development, as summarized by the applicant:

> "(*a*) An amount equal to four cents per thousand cubic feet of all gas (excepting that described in (*b*) *infra*, and less five per cent for leakage) transmitted by the Southern Gas Company through the transmission lines of Midway Gas Company, operated by the Southern Gas Company under its lease, or any other transmission line, which might be operated by the Southern Gas Company, from any fields which might be developed by the Northern Exploration Company under this contract, and of all gas produced by the development work of Northern Exploration Company and sold by the Southern company for consumption in the gas fields or elsewhere but not transmitted through the said pipe line.
>
> "(*b*) A further amount equal to three-fourths of one cent per thousand cubic feet of all gas transmitted through any such pipe lines and used by the Southern Gas Company in any of its plants or sold by it to any electric light or artificial gas company and used by it in the manufacture of electric light or artificial gas for public distribution."

The wells described in the opinion of this Commission heretofore filed were drilled by the Northern Exploration Company under this contract. The effect of these contracts is to give the Southern California Gas Company the right to extract natural gas from the fields

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covered by the contract with the Southern Pacific Land Company and others, and from other land covered by contracts, but to subject the Southern California Gas Company to the continuing obligation to pay to the Northern Exploration Company the compensation provided for developing the gas as above set forth. It appears that the cost of this development work, as far as gas wells are concerned, to the Northern Exploration Company has been, up to June 30, 1915, according to the figures presented herein, $287,836.08.

It appears further that Northern Exploration Company has received compensation under this contract and would, therefore, not be entitled to additional interest upon its investment.

It is now proposed that Southern California Gas Company transfer to the Midway Gas Company all its rights under its contracts with Southern Pacific Land Company and other companies whose lands it has contracted to develop for natural gas. It is proposed that an equitable settlement would provide for the release by Northern Exploration Company of all of its claims for compensation for drilling and developing gas wells under its contract with Southern California Gas Company, and it is proposed further to effect such release that Northern Exploration Company be compensated in preferred stock of Midway Gas Company, issued at 80 cents on the dollar, for the actual cost to it of drilling and developing the gas wells, together with the cost of such implements, materials and supplies as may be essential to this work of drilling and developing natural gas wells. This cost, as heretofore stated, is reported at $287,836.08, and it is proposed that stock be issued for this amount of the par value of $360,000.00.

It will be essential, in view of the changes and delays incident to the completion of the transaction herein involved, that the transfer of the properties of Northern Exploration Company and Southern California Gas Company to Midway Gas Company should be made effective as of June 30, 1915. This order will contemplate the transfer as of that time.

The copy of the first and refunding mortgage filed by this applicant provides for a sinking fund to be payable after certain deductions from the company's gross earnings, including a working capital for the purpose of maintaining an adequate supply of gas, but the amount of this working capital is further fixed at such sum as the board of directors of the Midway Gas Company "in its discretion" shall deem necessary.

I shall recommend the approval of this form of trust deed, but only on condition that it shall be so amended that the amount of working capital to be deducted before the sinking fund shall accrue shall be fixed by the amount necessary to maintain an adequate supply of

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natural gas without reservation as to the discretion of the board of directors. This, of course, will require certain other changes to make the document consistent.

Nothing in this opinion is intended as an approval of any of the contracts entered into by Southern California Gas Company, either with Northern Exploration Company or with companies owning natural gas lands for the development of those lands, nor for the payment of compensation for the gas extracted from those lands. These are all matters to be passed upon in a rate inquiry and are not pertinent to this proceeding. Nor is there any intention in this opinion to pass upon the value of any of the properties of Southern California Gas Company, Northern Exploration Company or Midway Gas Company.

In determining the amount of stock, bonds or notes to be issued by Midway Gas Company in this matter, this Commission has taken no account of the depreciation of these properties or any of them, nor has it taken any separate account of those portions of these properties which are used and useful in public utility business as distinguished from those which are not used and useful. There has been no endeavor either to eliminate undue or unreasonable cost or expense in connection with any of these properties under consideration.

As stated in the previous opinion in this matter, the Commission has chosen to take a broad view of this natural gas situation and has expressed a willingness to authorize stocks, bonds and notes in an amount which would enable the applicant to reorganize its affairs as long as such an amount did not appear inconsistent with the public interest. The ability to earn on the stocks, bonds and notes herein authorized is dependent upon so many elements of hazard and chance that there has been no endeavor herein to limit the stock, bonds and notes to a basis upon which the applicant might reasonably be expected to earn a return.

It will be necessary for the applicant after all the outstanding first mortgage bonds have been obtained, to cancel these bonds and to cancel also the mortgage against which they are issued.

It is proposed by the applicant to issue its first and refunding mortgage bonds with the June 1, 1915, coupon detached.

After consideration of all of the elements involved in this application, I recommend the following supplemental order:

FIRST SUPPLEMENTAL ORDER.

It is hereby ordered that the order heretofore issued by this Commission in the above entitled matter on June 25, 1915 (Decision No. 2519), be and the same is hereby ordered amended in the following particulars.

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In lieu of the authority heretofore given the applicant to issue $684.000.00 of first and refunding bonds as follows:

> "(*b*) $684,000.00 face value of said bonds shall be issued at 90 per cent of face value for the purpose of acquiring the compressor plant and gathering lines of the Southern California Gas Company in the Midway Oil Field in Kern County as described in the opinion which precedes this order; and for the purpose of taking over the rights and obligations of Southern California Gas Company in the contracts heretofore entered into between Honolulu Consolidated Oil Company and Southern California Gas Company and Midway Gas Company, and the Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company and Southern California Gas Company and Midway Gas Company; and for the additional purpose of purchasing an automobile from Southern California Gas Company."

The applicant is hereby given authority to issue bonds as follows:

> Six hundred and sixty thousand dollars face value of said bonds shall be issued at 90 per cent of face value for the purpose of acquiring the compressor plant and gathering lines of the Southern California Gas Company in the Midway Oil Fields in Kern County as described in the original opinion in this matter, dated June 25, 1915; and for the purpose of taking over the rights and obligations of Southern California Gas Company in the contracts heretofore entered into between Honolulu Consolidated Oil Company and Southern California Gas Company and Midway Gas Company, and Southern Pacific Land Company, Kern Trading and Oil Company and Associated Oil Company and Southern California Gas Company and Midway Gas Company; and for the additional purpose of purchasing an additional automobile from Southern California Gas Company.
>
> Twenty-three thousand dollars face value of said bonds shall be issued at not less than 90 per cent of face value by Midway Gas Company for the purpose of discharging an obligation in the sum of $20,833.57, owed by Southern California Gas Company, said bonds to be issued under an agreement with Southern California Gas Company under the terms of which the payment of said indebtedness of $20,833.57 by Midway Gas Company shall constitute a part consideration for the transfer of the property of Southern California Gas Company to Midway Gas Company.

It is further ordered that in lieu of the authority heretofore granted to Midway Gas Company in this matter to issue $396,000.00 par value

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and $9,000.00 par value of its preferred stock to Northern Exploration Company, the applicant be granted authority to issue 3,600 shares of its preferred stock of the par value of $100.00 per share, or $360,000.00 par value of its preferred stock, to Northern Exploration Company for the purpose of acquiring the properties of Northern Exploration Company, consisting of certain gas wells, implements, etc., as specified in the original opinion of this Commission in this matter, dated June 25, 1915, and for the further purpose of obtaining the release by Northern Exploration Company of any claims against Southern California Gas Company or Midway Gas Company for compensation for natural gas subsequent to June 30, 1915, under such contracts as it may have with Southern California Gas Company providing for such compensation, as described in the foregoing opinion.

It is further ordered that Midway Gas Company be granted authority, and it is hereby granted authority, to execute a mortgage of its property substantially in the form of a copy of a mortgage and deed of trust filed with this Commission in this proceeding as Exhibit "E," entitled "First and Refunding Mortgage, Midway Gas Company to Mercantile Trust Company of San Francisco," providing for an issue of bonds dated December 1, 1914, and maturing December 1, 1929; on the condition that said form of mortgage and deed of trust be amended so that the amount applicable to sinking fund shall be determined in so far as a proper working capital is concerned, as indicated in the foregoing opinion, by eliminating the condition that the amount of such working capital shall be determined in the discretion of the board of directors of Midway Gas Company.

It is further ordered that the applicant be granted authority, and it is hereby granted authority, to execute a trust agreement to secure an issue of $88,305.00 five-year 6 per cent gold notes in the form of a copy of said agreement filed in connection with this application and marked Exhibit "D," entitled "Midway Gas Company and Mercantile Trust Company of San Francisco, trustee, Trust Agreement Securing $88,305.00 five-year 6 per cent gold notes," said agreement being dated December 1, 1914.

The authorization herein given for the execution of said first and refunding mortgage and said trust agreement is an approval for the purpose of this proceeding only, and an approval only in so far as this Commission has authority to approve such a mortgage and such an agreement under the terms of the Public Utilities Act; and is not intended as an approval in the various legal requirements to which said mortgage and said trust agreement may be subject.

It is further ordered that the order heretofore made by this Commission in this matter (Decision No. 2519), to which reference has

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heretofore been made, be and the same is hereby amended by canceling and annuling that portion of said order reading as follows: "The preferred stock herein authorized to be issued shall not be issued until this Commission has issued a supplemental order approving the amended articles of incorporation of Midway Gas Company, describing the terms and conditions of said preferred stock."

It is further ordered that all of the provisions and terms of the order heretofore issued in this matter, dated June 25, 1915, shall remain in full force and effect except where in conflict with the order herein.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of September, 1915.

DECISION NO. 2736.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE SALE OF CERTAIN PROPERTIES.

Application No. 1645.

Decided September 1, 1915.

The Commission heretofore authorized applicant herein to transfer to the Midway Gas Company a certain compressor plant and gathering lines in the Kern Oil Fields for a consideration of $684,000.00 face value of bonds of the Midway Company. By agreement this amount was reduced to $683,000.00 face value, $660,000.00 being for properties and $23,000.00 face value for certain contracts and the original order is accordingly amended to provide that $660,000.00 face value of Midway bonds shall be subject to the lien of the first mortgage bonds of the Southern California Company instead of $684,000.00 as hereinbefore provided.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

This Commission heretofore on June 25, 1915 (Decision No. 2517), authorized Southern California Gas Company to transfer to Midway Gas Company its natural gas compressor plant near Taft, Kern County, its natural gas field gathering lines located in Kern County and certain contracts for the development of natural gas, all as specified in said decision, to which reference is hereby made. It was provided that in consideration for this transfer, Midway Gas Company should issue to

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Southern California Gas Company $684,000.00 of its first and refunding mortgage fifteen-year gold bonds.

By reason of certain adjustments in this transaction a supplemental order is now required to enable the Southern California Gas Company and Midway Gas Company to complete their negotiations. For the details of the adjustment in this matter, reference is hereby made to the first supplemental opinion and order (Decision No. 2735), issued today in the matter of the application of Midway Gas Company for authority to issue stock, bonds, and notes (Application No. 1644).

Under the adjusted figures, the amount of bonds to be issued in payment for the properties to be transferred by Southern California Gas Company is reduced from $684,000.00 to $683,000.00. It is further provided that $660,000.00 of these bonds should be issued direct to Southern California Gas Company and that the remaining $23,000.00 of bonds may be used by Midway Gas Company to liquidate an indebtedness of $20,833.57 owing by Southern California Gas Company in connection with the cost of natural gas contracts. It will be provided, therefore, that $660,000.00 of Midway Gas Company bonds should go direct to Southern California Gas Company to be placed under the lien of its first mortgage bonds, and that in addition Midway Gas Company should extinguish this indebtedness of $20,833.57 for the benefit of Southern California Gas Company.

Accordingly, I submit the following form of order:

FIRST SUPPLEMENTAL ORDER.

The order of this Commission dated June 25, 1915 (Decision No. 2517), in the above entitled proceeding is hereby amended to the end that the compensation to be received by Southern California Gas Company for the sale of the properties therein authorized to be transferred to Midway Gas Company shall in lieu of $684,000.00 face value of first and refunding bonds of Midway Gas Company consist of $660,000.00 of said first and refunding mortgage fifteen-year gold bonds of said Midway Gas Company and the payment by Midway Gas Company in a manner satisfactory to Southern California Gas Company of an indebtedness of said Southern California Gas Company in an amount of $20,833.57, representing the cost to Southern California Gas Company of certain natural gas contracts.

It is further ordered that the order of this Commission heretofore rendered in this matter, to which reference has heretofore been made be amended, and it is hereby ordered amended, so that instead of $684,000.00 of Midway Gas Company bonds, heretofore directed to be made subject to the lien of the first mortgage bonds of Southern California Gas Company, there shall be subject to the first mortgage bonds

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of Southern California Gas Company $660,000.00 face value of first and refunding mortgage fifteen-year gold bonds of Midway Gas Company.

It is further ordered that all of the provisions of the order heretofore issued in this matter by this Commission, dated June 25, 1915, shall, except as in conflict with the order herein, remain in full force and effect.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of September, 1915.

DECISION No. 2737.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING IT TO ISSUE TO THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS, ITS BONDS, BEARING INTEREST AT THE RATE OF 6 PER CENT PER ANNUM.

Application No. 1525.

Decided September 2, 1915.

Supplemental order permitting applicant to issue and sell $15,000.00 face value of its 6 per cent bonds, such bonds being a portion of bonds heretofore authorized for additions and betterments to its system.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

THIRD SUPPLEMENTAL ORDER.

Whereas this Commission by an order dated February 27, 1915 (Decision No. 2182), authorized Santa Barbara Gas and Electric Company to issue and sell $100,000.00 face value of its first mortgage 6 per cent thirty-year gold bonds; and

Whereas said order dated February 27, 1915, provides that bonds to the face value of $62,000.00 shall be issued and sold only after applicant has obtained a supplemental order specifically authorizing the use of the proceeds to be obtained from the sale of said bonds; and

Whereas this Commission has heretofore by supplemental orders authorized applicant to issue and sell bonds to the amount of $21,000.00; and

Whereas Santa Barbara Gas and Electric Company has now filed a supplemental application for an order authorizing it to issue and sell

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$15,000.00 face value of first mortgage 6 per cent thirty-year gold bonds to defray the cost of additions and betterments, as shown in Exhibit "A," attached to the third supplemental application; and

Whereas it appears that the purposes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Barbara Gas and Electric Company be, and it is hereby, given authority to issue $15,000.00 face value of its first mortgage 6 per cent thirty-year bonds, said bonds bearing numbers 1149 to 1163, both inclusive, and being secured by a trust indenture dated July 1, 1911, and executed to Los Angeles Trust and Savings Bank.

It is hereby further ordered that the provisions of this Commission's order dated February 27, 1915 (Decision No. 2182), and the amendments thereto, shall remain in full force and effect, except as modified and amended by this third supplemental order.

The foregoing third supplemental order is hereby approved and ordered filed as the third supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of September, 1915.

DECISION No. 2738.

IN THE MATTER OF THE APPLICATION OF LANCASTER FEED AND FUEL COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK AND STOCK CERTIFICATES, AND ITS PROMISSORY NOTE SECURED BY MORTGAGE AND CERTAIN UNSECURED PROMISSORY NOTES.

Application No. 1813.

Decided September 2, 1915.

Lawrence L. Larabee, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission by an order dated August 14, 1915 (Decision No. 2693), authorized Lancaster Feed and Fuel Company to issue $9,000.00 par value of capital stock and its one-year 8 per cent note in the sum of $1,000.00, said note to be secured by a mortgage; and

Whereas Lancaster Feed and Fuel Company has submitted to this Commission for approval a copy of a mortgage, securing the payment

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of the $1,000.00 note, said mortgage having been marked Exhibit "C"; and

Whereas it appears to this Commission that said mortgage should be approved,

It is hereby ordered that the mortgage filed in connection with this application and marked Exhibit "C," be and it is hereby approved.

The approval herein given of said mortgage is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of September, 1915.

DECISION NO. 2739.

SCHMEISER MANUFACTURING COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

IN THE MATTER OF PUBLISHING A RULE GOVERNING THE TRANSPORTATION OF ARTICLES TOO LONG OR TOO LARGE TO BE LOADED THROUGH THE SIDE DOOR OF A 36-FOOT BOX CAR.

Case No. 823.

Decided September 2, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled proceeding having, on August 28, 1915, made written request to this Commission that the above entitled proceeding be dismissed,

It is hereby ordered that the above entitled proceeding be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 2d day of September, 1915.

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DECISION No. 2740.

IN THE MATTER OF THE APPLICATION OF RICHMOND AND SAN RAFAEL FERRY AND TRANSPORTATION COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF 750 SHARES OF CAPITAL STOCK.

Application No. 1828.

Decided September 4, 1915.

Applicant, operating a ferry system between Richmond, Contra Costa County, and San Rafael, Marin County, applies for and is granted permission to issue 750 shares of its capital stock of the par value of $100.00 per share, such stock to be sold at par, proceeds to be used for the purpose of constructing a ferryboat to operate between the points named.

James M. Oliver and *Henry A. Jacobs,* for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of Richmond and San Rafael Ferry and Transportation Company for authority to issue 750 shares of stock of the par value of $100.00 per share for the purpose of building a larger and faster ferryboat, and to provide for such increased facilities as may thereby be made necessary.

Applicant operates a ferry line between Richmond, Contra Costa County, and San Rafael, Marin County. This line forms a short route between Alameda and Contra Costa counties and Napa, Sonoma, Marin and neighboring counties. It is also a connecting link between two sections of the state highway now under construction.

During the three months of its operation the company's records show that it has carried approximately 5,200 automobiles and 27,000 passengers.

At the present time the company leases a ferryboat from the Association of Mare Island Employees at a rental of $250.00 per month. Experience has shown this boat to be inadequate both in size and speed, and the company now desires to build a new boat capable of carrying 50 automobiles and of maintaining a one-hour schedule if traffic demands. At the present time, the company provides a two-hour service, making five trips on week days and seven or more on Sundays and holidays.

As evidence of the inadequacy of the present facilities, witness for applicant stated that as many as 86 automobiles have sometimes stood in line awaiting transportation. If this application is granted, the company expects to have the new boat completed within seven or eight months time.

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Applicant has not yet made final arrangements for the building of its new boat, or for the construction of additional facilities, and any order in this application must of necessity be based upon the filing of additional data as to these expenditures.

Applicant was incorporated March 27, 1915, under the laws of the State of California with an authorized capitalization of $100,000.00 divided into 1,000 shares of the par value of $100.00 per share. By the terms of this Commission's Decision No. 2624, applicant was authorized to issue 250 shares of stock for organization expenses and to defray the cost of constructing docks, wharves, etc.

At the hearing of the present application, the company submitted a balance sheet, which shows its condition as of August 1, 1915, as follows:

Assets.

Fixed capital	$26,175 50
Cash and deposits	1,072 75
Accounts receivable	947 35
	$28,195 60

Liabilities.

Capital stock	$25,000.00
Accounts payable	1,771 51
Reserve for depreciation	525 00
Surplus	899 09
	$28,195 60

Applicant has also submitted an income account for the three months ending July 31, 1915, as follows:

Operating revenues	$8,219 15
Operating expenses	6,795 06
Gross income	$1,424 09
Depreciation	525 00
Net income	$899 09

Applicant has made no arrangements for the sale of the stock herein applied for, but states that it expects to sell the same at par to present stockholders.

After consideration of the evidence submitted by applicant, I am of the opinion that this application should be granted and I accordingly submit the following form of order:

ORDER.

Richmond and San Rafael Ferry and Transportation Company having applied to this Commission for authority to issue 750 shares of stock

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of the par value of $100.00 per share for the purposes set forth in the opinion which precedes this order; and it appearing to this Commission that applicant's request is reasonable and should be granted and that the purposes for which it is proposed to issue said stock are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Richmond and San Rafael Ferry and Transportation Company be, and it is hereby, authorized to issue 750 shares of its capital stock of the par value of $100.00 per share for the purpose of defraying the cost of constructing a new ferryboat and to provide for such increased facilities as may be made necessary by the operation of said boat.

The order herein is granted upon the following conditions and not otherwise:

1. Before issuing any of the stock herein authorized, applicant shall file with this Commission a detailed statement as to the cost of the new boat which it proposes to build, and such other additions and betterments to its property as it proposes to pay for out of the proceeds of the stock herein authorized, and shall secure from this Commission a supplemental order approving the same.

2. The stock herein authorized shall be issued by applicant at not less than its par value of $100.00 per share.

3. Richmond and San Rafael Ferry and Transportation Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock herein authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission, stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which in so far as possible, is made a part of this order.

4. The authority herein granted Richmond and San Rafael Ferry and Transportation Company to issue stock shall apply only to such stock as shall have been issued on or before August 31, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of September, 1915.

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Decision No. 2741, grade crossing; not printed. See end of volume.

DECISION No. 2742.

LOS MOLINOS CITRUS FARMS COMPANY, LYON CATTLE COMPANY, THE SUNSET SYNDICATE

vs.

CONELAND WATER COMPANY.

Case No. 612.

IN THE MATTER OF THE RATES AND CHARGES OF CONELAND WATER COMPANY, ON THE RAILROAD COMMISSION'S OWN MOTION.

Case No. 671.

Decided September 4, 1915.

Complainant, The Sunset Syndicate, entered into a contract with defendant water company under which it was to obtain 500 inches of water to be used on certain lands, portions of which it has transferred to Los Molinos Citrus Farms Company and Lyon Cattle Company. That together with other considerations The Sunset Syndicate was to pay defendant $12,500.00 for such rights to water, together with $2.00 per year per acre as rental. Complainants now protest defendant's right to charge $12,500.00 for water rights, contending that it has delivered water to other consumers without a charge for a water right, and accordingly such a charge is discriminatory and unjust. Defendant, in its answer, contends that it is not a public utility, and also that the sum of $12,500.00 was in the nature of a consideration for entering into such agreement and not a charge for a water right.

Held. After a review of conditions under which defendant operates, that it is a utility subject to this Commission's jurisdiction. That public service corporations can not dodge their liability as public utilities by requiring consumers to enter into contracts before rendering service. That the lands of complainants lie within the district to which defendant's water is dedicated and they are accordingly entitled to be supplied therewith. That the terms and conditions under which water was to be delivered to complainants are just and reasonable with the exception of the additional charge of $12,500.00 and defendant directed to deliver water to the lands of complainants as heretofore by contract provided, excepting from such contract the provision requiring the payment of $12,500.00 in consideration for such service. Complaint in all other respects dismissed.

Allen L. Chickering, for Complainants, in Case No. 612.

Harrison & Harrison, for Coneland Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The above entitled proceedings were consolidated for hearing and decision.

The complaint in Case No. 612 alleges, in effect, that complainants and defendant are California corporations; that defendant is a public utility

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supplying water to the land of Los Molinos Land Company and to such portions thereof as have been sold by said Los Molinos Land Company and to the land of other individuals and corporations in the vicinity of the land of Los Molinos Land Company in Tehama County; that on or about February 23, 1912, Los Molinos Land Company, Coneland Water Company and The Sunset Syndicate entered into an agreement in writing, a copy of which is attached to the complaint and marked "Exhibit A;" that by said agreement there was granted to The Sunset Syndicate the right to take from the canals of Coneland Water Company 500 miner's inches of water in return for the payment by The Sunset Syndicate of certain considerations specified in the agreement; that by a water right agreement executed by Coneland Water Company, the land upon which said 500 miner's inches of water was to be located was thereafter specified and that by agreement of February 18, 1914, certain of the land covered by said water right agreement was withdrawn and other land substituted therefor; that of the 500 miner's inches hereinbefore referred to, 400 inches were intended to compensate The Sunset Syndicate for the water rights and rights of way granted by it to Coneland Water Company and for the cost of the construction of the "High Line Canal" which was to be constructed by The Sunset Syndicate and conveyed to Coneland Water Company, and that the cost of the remaining 100 inches of water was intended to be met by the payment of the sum of $12,500.00, or $125.00 per inch; that on January 17, 1913, Coneland Water Company conveyed to The Sunset Syndicate for the benefit of parties to whom the syndicate had sold 420 acres of land the right to receive 72 miner's inches of water, without making any charge whatever for any so-called water right; that the lands to which Coneland Water Company is supplying water without any initial payment for a so-called "water right" are owned and occupied by E. E. Johnston, R. F. Johnston, J. W. Chastain, J. A. Ingram and Edward L. Wilhoit; that said agreement of February 23, 1912, has been executed only in part; that the payment of $12,500.00 therein referred to has not been made and is not as yet due; that the High Line Canal has been largely constructed and completed; that the complainants, Lyon Cattle Company and Los Molinos Citrus Farms Company, are the successors in interest of The Sunset Syndicate as to a portion of the lands in which said so-called water rights were located; that Coneland Water Company has discriminated in its charges for water rights; that the charges of Coneland Water Company for water rights are unreasonable and exorbitant, but that Coneland Water Company's annual charge of $2.00 per acre is reasonable; and that said High Line Canal to be constructed by The Sunset Syndicate is properly a capital expenditure to provide Coneland Water Company with a portion of its plant for the service of the public and was intended by Coneland Water Company for use in

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supplying lands other than those owned and controlled by the complainants. Complainants ask that the Railroad Commission investigate the alleged discriminations in charges for water rights made by Coneland Water Company, and, on its own motion, if necessary, the reasonableness of the charges of Coneland Water Company for water rights and that said discrimination be ordered removed, and that Coneland Water Company be directed to establish reasonable rates for water rights or to omit the same.

The agreement of February 23, 1912, provides in part as follows:

The land company and the water company convey to The Sunset Syndicate the right to take and receive for irrigation, from the water company's canal, 500 miner's inches of water, of which amount 375 miner's inches are to be conveyed to the head of the canal to be constructed by The Sunset Syndicate and there taken out, while the remaining 125 miner's inches are to be taken out of the main canal of the water company at the head of convenient lateral ditches. The Sunset Syndicate agrees as follows:

1. To commence within three years the construction of a "High Line Canal" to take water out of the water company's canal, which canal "is to be constructed in a good workmanlike and permanent manner by party of the second part and run upon a suitable grade from that point in a northerly direction for the irrigation of the lands of the party of the second part, or others lying under such canal." The canal is to be constructed of a capacity sufficient to convey not less than 400 inches of water within five years from the date of the agreement, and upon completion is to be turned over and delivered to the water company at the sole cost and expense of The Sunset Syndicate. The canal is to become the property of Coneland Water Company and is thereafter to be maintained and operated by said company.

2. To pay annually to the water company for the use of water upon the land of The Sunset Syndicate $2.00 per acre per annum, with a minimum annual charge of not less than $10.00 for any one subdivision of land, with certain provisions for increasing minimum charges year by year.

3. To convey to Los Molinos Land Company and Coneland Water Company sufficient rights of way for all their ditches constructed or to be constructed.

4. To convey to Los Molinos Land Company or its assigns, all riparian and other rights which have at any time belonged to The Sunset Syndicate appurtenant to any lands owned by it or in which it is interested, and to the waters of Big Antelope Creek, with the right to divert and appropriate all such waters, with certain reservations.

5. To pay to Coneland Water Company the sum of $12,500.00 at times specified.

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The agreement also provides for the execution by Coneland Water Company of a water right agreement in the usual form attaching the said 500 miner's inches of water to designated lands in the proportion of five acres of land for each inch of water. The Sunset Syndicate is granted the option, within two years from the date of the agreement, of purchasing and acquiring not to exceed 200 inches of additional water at the rate of $125.00 per inch. The agreement contains other provisions to which it is not necessary here to refer.

The answer states defendant's case in ample detail. The principal point in the answer is that Coneland Water Company is not a public utility and is not subject to the Railroad Commission's jurisdiction. The answer denies that the sum of $12,500.00 referred to in the complaint was agreed upon as representing a water right payment and alleges that the provision for the payment of said sum was simply one of the terms of a bargain for the compromise and settlement of certain suits, claims, and controversies and the reciprocal grant of certain property rights. Defendant asserts that whatever right exists in favor of complainants herein to demand or receive water from defendant's system of canals is derived solely and exclusively from the contracts between the parties and is not at all based upon any duty which the defendant owes as a water utility.

Preliminary hearings in Case No. 612 were held on August 3 and 20, 1914. It then became apparent that the real issue which complainants desired to present is an issue with reference to the reasonableness of the charge for a so-called "water right" alleged to have been made by Coneland Water Company. Section 60 of the Public Utilities Act provides in part that issues as to rates can be raised only by twenty-five consumers or purchasers or prospective consumers. In the present case it was impossible to secure twenty-five consumers to raise this issue. As the issue was presented in good faith and as hardship might ensue unless complainants were allowed to present this issue, the Commission, on its own motion, on September 10, 1914, instituted an investigation in Case No. 671, into the rates of charges of Coneland Water Company for water, including the charges, if any, for so-called "water rights."

Hearings in both cases were held on February 4 and 5 and March 2 and 3, 1915. Considerable delay has been occasioned in the filing of briefs. These briefs have now been filed. They consider thoroughly and ably the matters at issue.

Two main issues are presented in these proceedings, as follows:

1. Is Coneland Water Company a public utility?

2. If so, are complainants entitled to any relief from this Commission?

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I shall first consider the question whether Coneland Water Company is a public utility. In doing so, I shall refer to certain matters, some of which are not in and of themselves conclusive on this question, but all of which should be considered in the solution of the problem.

Coneland Water Company was incorporated on March 7, 1907. The articles of incorporation empower the corporation, in part, to engage in the business of diverting, appropriating and supplying water, furnishing the same for irrigation and all other beneficial uses and purposes, and to supply, furnish and distribute the same to others for compensation. The corporation is authorized to acquire water and water rights by appropriation, purchase, condemnation, eminent domain and in all other proper methods, and to collect rents and compensation for all water and water rights. Specific authorization is given to furnish and supply water and water rights to cities, towns and farming communities, and to sell, rent and distribute the same.

On May 18, 1905, Smith Crowder, acting for and in behalf of Los Molinos Land Company, filed on the north side of Mill Creek a notice appropriating from the waters of said creek, water to the extent of 5,000 inches, measured under a 4-inch pressure, for the purpose of using said waters for irrigation and domestic use "upon the lands situate to the north and west of the point of diversion, said lands now being the property of Anna R. Cone and of the Los Molinos Land Company, and upon all of said lands." It is admitted that the lands of complainants herein are included in the general description contained in this notice of appropriation.

Thereafter, Los Molinos Land Company, which owns the entire capital stock of Coneland Water Company with the exception of the shares to qualify directors, conveyed to Coneland Water Company water rights, rights of way, ditches, and other property for the purpose of enabling Coneland Water Company to distribute and supply water. Whenever Los Molinos Land Company sold any of its lands it was provided that water should be supplied to such land by Coneland Water Company, and that upon final payment for the land and the conveyance thereof to the purchaser, Coneland Water Company should execute a so-called water right agreement, agreeing to deliver water in the amount of one miner's inch to five acres, for an annual compensation of $2.00 per acre. The evidence shows that out of a total of 10,560.19 acres originally belonging to Los Molinos Land Company, the company has sold 7,790.72 acres with water, and 352.94 acres without water, and that it still has unsold 807 acres which it hereafter expects to sell with water, and 1,409.53 acres which it expects to sell without water. In addition to delivering water to Los Molinos Land Company's lands, Coneland Water Company also delivers 72 miner's inches of water to

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lands belonging to E. E. Johnston, R. F. Johnston, J. W. Chastain and Edward L. Wilhoit, none of these lands having belonged to Los Molinos Land Company. Coneland Water Company has also agreed to sell to The Sunset Syndicate, its successors or assigns, the 500 miner's inches of water referred to in the agreement of February 23, 1912. For about a year the company delivered water to the Harvey ranch for compensation, this also being land at no time owned by Los Molinos Land Company.

On April 2, 1912, Coneland Water Company wrote to this Commission as follows:

> "The Coneland Water Company is organized for the sale of water for irrigation. Our charges are $2.00 per acre per year payable on September first. Our charges for the sale of water rights, that is, the right to buy water, are $25.00 per acre. The only exceptions to these charges are a few contracts dated prior to March, 1908, in which a charge of $1.00 per acre per annum is made."

On May 15, 1912, Coneland Water Company wrote to the Railroad Commission stating that the company is "organized as a water corporation for the delivery of water for irrigation purposes," and asking advice with reference to the right of the company to rebate all or a portion of its water charges by reason of failure to deliver water to its consumers as promptly as it had desired.

On April 23, 1913, Coneland Water Company filed with the Railroad Commission a list of consumers to whom it was selling water at less than $2.00 per acre, and explained the situation under which the sale of water at lesser rates was begun. The water company stated that in 1908 the rate was raised to $2.00 per acre and that all agreements entered into subsequent to that time have been upon the basis of $2.00 per acre. The letter continues as follows:

> "The reason the rates were raised to $2.00 was the fact that it is not possible to operate the company at $1.00 per acre. Our present rates are set at $2.00 per acre, but we have no assurance that even this amount is going to be sufficient to pay the cost of maintenance charges and give us interest upon our investment.
>
> "We submit the entire matter for your decision. We have not at this time data to determine whether the $2.00 rate even is high enough to pay, and that matter may be brought to your attention at a later date."

On April 24, 1914, Coneland Water Company wrote to the Railroad Commission advising that "we have a fixed rate of $2.00 per acre, with the exception of the following items on which contract was made as per schedule attached." Then follows a list of eighteen cases in which rates less than $2.00 per acre were in effect.

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On August 8, 1912, Coneland Water Company filed with the Railroad Commission an application for authority to issue capital stock of the par value of $100,000.00. The petition states that the character of petitioner's business is to furnish water for irrigation and domestic purposes, and that its territory is a strip varying from one to three miles in width and about ten miles in length. This petition could have been filed only on the theory that Coneland Water Company is a public utility. The matter came on for hearing and thereafter, on September 21, 1912, the Railroad Commission made its order granting the application (Vol. 1, Opinions and Orders of Railroad Commission, p. 592).

Coneland Water Company has regularly filed with this Commission the annual reports which all public utilities are required to file.

Up to the time of the hearings in these proceedings, no suggestion was ever made to the Railroad Commission by Coneland Water Company or by any person connected therewith that the company is not a public utility. The water company's rates were regularly filed with the Commission, the company was authorized to issue stock on the theory that it is a public utility and the company filed its annual reports on that theory. If this company is now to be held not to be a public utility, such holding will be in the face of the most positive holding out and admission on the part of the company that it is a public utility.

In considering the question whether, under the facts as shown in the record, Coneland Water Company is a public utility, I shall confine myself to the most recent expressions of the will of the people of this State in this connection, as found in section 23 of article XII of the constitution, as amended on October 10, 1911, the Public Utilities Act, as effective on March 23, 1912, and amended on August 10, 1913, and chapter 80 of the Laws of 1913, effective August 10, 1913. It is unnecessary to set out here these provisions in full or to refer to the decisions of the Supreme Court of the United States on the question whether these provisions can be held to violate any Federal right. These matters are fully referred to in *Becker* vs. *Holabird, Receiver of California Development Company* (Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 153), to which decision reference is hereby made.

Bearing in mind these constitutional and statutory provisions, I find that Coneland Water Company is clearly a public utility, subject to the jurisdiction of the Railroad Commission. This conclusion is based on the findings which have hereinbefore been set forth in this opinion, and, in addition thereto, on the following specific findings of fact:

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1. The water system of Coneland Water Company is owned, controlled, operated and managed in connection with and to facilitate the diversion, development, supply, distribution, sale, furnishing and carriage of water for irrigation.

2. Coneland Water Company owns, controls, operates and manages said water system for compensation within California.

3. Coneland Water Company is engaged in the business of selling water for compensation to the purchasers of land from Los Molinos Land Company, to Ramsey, and to E. E. Johnston, R. F. Johnston, J. W. Chastain, J. M. Ingram and Edward L. Wilhoit, purchasers of land from The Sunset Syndicate in the Oak Park tract, and has also sold water to the Harvey ranch for compensation.

4. Coneland Water Company is not organized for the purpose of delivering water to its stockholders or members at cost, but, on the contrary, is a corporation organized for profit.

5. Coneland Water Company is engaged in the sale of water for compensation to those portions of the public who are located within the boundaries of the land of Los Molinos Land Company, to the people in Oak Park tract and to the others mentioned, and has held itself out as willing to sell water to The Sunset Syndicate, its successors and assigns, as hereinbefore set forth.

6. Coneland Water Company has a monopoly of the business of transmitting water for sale, rental and distribution in the region covered by the lands of the complainants herein, the Los Molinos Land Company, and the people to whom said companies have sold land.

Under the facts as shown in these proceedings and the constitution and statutes of this State applicable thereto, there can be no reasonable question that Coneland Water Company is a public utility subject to the jurisdiction of the Railroad Commission, unless it can be held that the constitution and statutes of California violate in this regard some provision of the Federal constitution. That no Federal right is violated seems clear from the authorities commented upon in the *Holabird* case, hereinbefore referred to.

Attention should also be drawn to the fact that the lands of complainants are within the place of intended use of the water claimed by Coneland Water Company, as shown by the notice of appropriation hereinbefore referred to, and that Coneland Water Company has by agreement with The Sunset Syndicate held itself out as willing to serve said lands with water. It is, of course, true, as pointed out by the Supreme Court of this State in *Palmer* vs. *Railroad Commission*, 167 Cal. 163, that the mere fact that lands are mentioned in a notice appropriating water is not conclusive of their right to receive the water appropriated, and it is equally true that the same person or corporation

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may own water appropriated for public use and water appropriated for private purposes. Nevertheless, care should be taken not to stretch such contentions to the breaking point. If arguments which are being urged before the Railroad Commission to show that this and that and the other corporation engaged in the sale of water is not a public utility are carried to their logical conclusion, almost every utility within the State can withdraw itself from public regulation, at least with reference to service to new customers, by the simple device of refusing to serve any new customers unless the customer signs a contract, and then claiming that by this device the utility has withdrawn itself with reference to such customer from public regulation. To the argument that the company, under its articles of incorporation, is a public utility, the answer would be made that the articles of incorporation are not conclusive and that they simply give the corporation the power, if it desires to exercise the same, of engaging in a public utility business. To the argument that the corporation has secured a franchise authorizing it to serve the territory in question, the answer would be made that this franchise simply confers a right which the utility may or may not exercise as it sees fit. To the argument that the corporation has held itself out as being a utility and has in the most positive way in its relations with the public authorities admitted that it is a public utility, the answer would be made that admissions count for nothing, and that notwithstanding admissions and holdings out, the question must be inquired into to ascertain whether there be some dedication in addition to these other facts and apart from the provisions of the constitution and statutes of this State. If these arguments are to prevail, it will not only be possible for each existing water, gas, electric and telephone utility to withdraw itself from regulation with reference to new customers, but it will also be possible for each new water, gas, electric and telephone utility to withdraw itself entirely from public regulation by refusing to serve any one who does not sign a contract, and then urging that by insisting upon the signing of contracts the company has exercised a right of selection which is inconsistent with public utility obligation.

That the Railroad Commission can not consistently take any such position unless compelled to do so by a final ruling of the courts to the effect that the constitutional and statutory provisions under which it is exercising its authority are violative of rights conferred by the Federal constitution is, of course, clear.

I come now to the second main issue in these proceedings, which is whether, assuming that Coneland Water Company is a public utility, complainants in Case No. 612 are entitled to any relief from this Commission.

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As already indicated, The Sunset Syndicate agreed to pay to Los Molinos Land Company and Coneland Water Company a number of considerations of various kinds. The Sunset Syndicate agreed to construct and convey to Coneland Water Company the so-called High Line Canal. The evidence shows that some $20,000.00 has already been expended on this undertaking and that the expenditure of an additional $3,500.00 will complete the project. The Sunset Syndicate also agreed to convey rights of way necessary for the construction of Coneland Water Company's canals, to convey riparian rights on Big Antelope Creek, to pay designated rates for water and, finally, to pay the sum of $12,500.00.

The only one of these considerations of which the complainants complain is the provision for the payment of $12,500.00. The position of complainants is clearly stated in their opening brief, as follows:

> "To our mind, practically all that there is involved in the present case from the standpoint of the complainants, is the right of a company engaged in public service business to charge to consumers, within the limits of the use to which its property is dedicated, for a 'water right' and thereafter to make an annual rental charge to produce an interest on the investment. It is our theory that the charge for water rights as made by defendant has paid, or will pay, for its plant, if defendant is permitted to continue to exact it. We are quite willing to concede that defendant should be permitted a reasonable return on its investment, but we differ from defendant in thinking that the investment should strictly be the investment of defendant and not the investment of people to whom it sells water."

Complainants draw attention to the letter from Coneland Water Company to the Railroad Commission, dated April 2, 1912, stating in part that the company's charges for the sale of water rights, that is, the right to buy water, are $25.00 per acre. They urge that of the 500 miner's inches the right to the use of which is granted in the agreement of February 23, 1912, 400 inches were intended to compensate The Sunset Syndicate for the water rights and rights of way granted by it and for the cost of construction of the High Line Canal, and that the cost of the remaining 100 inches of water was intended to be met by the payment of $12,500.00, which sum is $125.00 per inch and $25.00 per acre on the basis, adopted by Coneland Water Company, of one miner's inch for five acres of land. Complainants draw attention to the provision in the agreement of February 23, 1912, giving to The Sunset Syndicate an option to buy 200 miner's inches of additional water at the rate of $125.00 per inch, being $25.00 per acre, and to the provision that the sum of $12,500.00 is to be paid as the land of The

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Sunset Syndicate is subdivided and sold, "at the rate of $25.00 per acre."

Coneland Water Company takes the position that it has never made any charge for any "water right" and that the sum of $12,500.00 mentioned in the agreement of February 23, 1912, is simply one of the considerations of the agreement and that this sum was determined without any reference to payment for a water right.

On the one hand, if this sum of $12,500.00 was intended to cover a payment for a "water right," such charge is undoubtedly unlawful under the decisions of the Supreme Court of this State. *Leavitt* vs. *Lassen,* 157 Cal. 82; *Byington* vs. *Sacramento Valley West Side Canal Company,* 49 Cal. Dec. 633.

On the other hand, if, as earnestly contended by Coneland Water Company, this sum did not represent payment for any "water right," we are driven to the consideration of the question whether the rate established by Coneland Water Company for the delivery of water to The Sunset Syndicate, including the payment of $12,500.00 in addition to all the other considerations, is a reasonable rate. Attention has already been drawn to the fact that The Sunset Syndicate undertook to construct and donate to the Coneland Water Company the High Line Canal in addition to the conveyance of valuable rights of way and water rights.

After careful consideration, I find that the lands of complainants herein, referred to in said contract of February 23, 1912, and described in said water right agreement and modifications thereof, executed by Coneland Water Company under the terms of said contract, are within the territory to the service of which Coneland Water Company's water has been dedicated, and that Coneland Water Company should supply water to said lands on terms and conditions which are the same as the terms and conditions which are specified in said contract of February 23, 1912, except the provision for the payment of said $12,500.00, which terms and conditions, except the provision for the payment of said $12,500.00, are hereby found to be just and reasonable terms and conditions governing the sale of water by Coneland Water Company for use on said lands.

This Commission has no power to enforce, modify or abrogate a contract as such. But the Commission does have power over the relationship between a utility and its present or prospective customers and to compel a public utility, in proper cases, to extend its service on terms and conditions which are just and reasonable, which terms and conditions may be the same or may differ from the terms and conditions in some contract. The terms and conditions of the proposed service by Coneland Water Company enter into and are a part of the rate. Cone-

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land Water Company agrees simply to do one thing, namely, to sell water for a compensation which consists of the payment of the regular rate of $2.00 per acre, which all its other customers pay, and in addition thereto, the other considerations specified in the contract. The Railroad Commission is directing Coneland Water Company to supply water on certain terms and conditions which are all a part of the rate, which terms and conditions, however, do not include the payment of $12,500.00 in cash. It is not this Commission's function to pass on the question whether or not, on compliance by Coneland Water Company with the order herein, any action will lie in favor of said company in the courts, growing out of said contract of February 23, 1912, and it is not intended to express any opinion herein on this question.

The scope of the inquiry herein is of sufficient breadth to authorize the Commission, if it finds the necessity to exist, to inquire into all the rates charged by Coneland Water Company. The water company's usual rate, as filed with this Commission, is $2.00 per acre per annum. In a number of cases, however, antedating 1908, rates less than $2.00 are charged. No one has complained of any of these rates. The company itself states that it does not desire to alter them. While on the face of the situation it would appear that the charge to certain consumers of rates less than $2.00 per acre is a discrimination which should be removed, none of these consumers were given notice of these proceedings or appeared before the Commission. While I assume that notice to each consumer is not jurisdictional and that the Railroad Commission would have the power herein to establish rates to be charged by Coneland Water Company to all its consumers, the Commission should, in my opinion, be careful as a matter of ordinary fairness, not to increase public utility rates unless the consumers to be affected have had notice of the proceedings and an opportunity to be heard.

Under the facts of the present case, I do not consider it necessary, at the present time, to recommend an order with reference to the general rates charged by Coneland Water Company. If the water company should again admit that it is a public utility or if it should hereafter be determined on review of this Commission's decision herein that the company is a public utility, and if the company should desire to have its rates further investigated by this Commission, notice will be given to all parties interested and the matter will be disposed of as promptly as possible.

I submit the following form of order:

ORDER.

Public hearings having been held in the above entitled proceedings, and said proceedings having been consolidated for hearing and decision, and briefs having been submitted, and said proceedings now being ready for decision,

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The Railroad Commission, in reliance on each statement or finding of fact contained in the opinion which precedes this order, hereby finds as a fact that Coneland Water Company is a public utility and that its water system is a public utility water system, and that said company and said water system are subject to the jurisdiction of the Railroad Commission.

Basing its order on said finding and on the other findings which are contained in the opinion which precedes this order,

It is hereby ordered as follows:

1. Coneland Water Company is hereby directed to deliver water to the complainants herein for the lands referred to in contract dated February 23, 1912, between Los Molinos Land Company and Coneland Water Company, parties of the first part, and The Sunset Syndicate, party of the second part, and particularly described in water right agreement and modifications thereof executed by Coneland Water Company under the terms of said contract, as referred to in the opinion herein, at a rate which is the same as the considerations specified in said contract of February 23, 1912, to be paid by The Sunset Syndicate, party of the the second part, to Los Molinos Land Company and Coneland Water Company, parties of the first part, except the payment of the sum of $12,500.00, which rate, including each of said considerations with the exception of the payment of the said sum of $12.500.00, is hereby found to be a just and reasonable rate to be charged by Coneland Water Company for water sold for use on the lands referred to in said contract of February 23, 1912, and particularly described in said water right agreement and modifications thereof, executed by Coneland Water Company.

2. In all other respects, the above entitled proceedings are hereby dismissed, without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of September, 1915.

Decision No. 2743.

IN THE MATTER OF THE APPLICATION OF THE CALIFORNIA SOUTHERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK AND BONDS.

Application No. 1790.

Decided September 4, 1915.

Applicant proposes to construct a line of railway from the town of Blythe in the Palo Verde Valley, to Blythe Junction, connection with the line of the Santa Fe Railway. To defray expenses of construction it is proposed to issue $385,000.00

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par value of stock, $350,000.00 face value of first mortgage bonds and $400,000.00 face value of second mortgage bonds, the entire issue of bonds and $150,000.00 par value of stock to be issued to the Blythe Construction Company, $100,000.00 par value of stock to promoters, the balance being subscribed for by proposed purchasers.

Held, After review of the proposed contract between applicant and the construction company, that such contract is not favorable to the railroad company and several revised methods of procedure for the construction of this proposed road suggested and a tentative order made authorizing applicant to issue $350,000.00 first mortgage bonds and $400,000.00 second mortgage bonds together with 2,850 shares of stock of the par value of $100.00 per share covering such construction. The conditions under which such stock and bonds shall be issued and the minimum price at which they shall be sold to be fixed by supplemental order when a new form of contract is approved. Considering the hazardous nature of this enterprise and the work necessary in promoting same, applicant authorized to issue 750 shares of its capital stock of the par value of $100.00 per share to J. M. Neeland for promotion services. Applicant also to file with the Commission a statement of all bonuses and grants received and to make no disposition of same unless authorized by the commission.

Willis I. Morrison, for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

On July 17, 1915, California Southern Railroad Company filed an application with this Commission asking for authority to issue stock and bonds for the purpose of obtaining funds for the construction of a line of railroad from Blythe Junction, a station on the line of The Atchison, Topeka and Santa Fe Railway Company, in Riverside County, southeasterly to the town of Blythe, also in Riverside County, a distance of 43 miles.

California Southern Railroad Company was organized December 31, 1914, with an authorized capital stock of $400,000.00 divided into 4,000 shares of the par value of $100.00 per share. It is the expressed intention of the applicant to increase this stock authorization to $1,000,000.00, to consist of 10,000 shares of the par value of $100.00 per share. The incorporators have subscribed for 440 shares of stock and have paid in $4,400.00.

The proposed railway is intended primarily to provide transportation facilities for the Palo Verde Valley, located in the southeastern part of Riverside County and the northeastern part of Imperial County along the Colorado River. The applicant, in an exhibit entitled "Territory to be served by California Southern Railroad Company," states that the first 18 miles of road is over a desert waste with the nearby mountains containing rich mineral deposits of gypsum; the next 15 miles over a rich mesa, and the remaining mileage through Palo Verde Valley to Blythe, the main town in the valley. This exhibit estimates the population of the town of Blythe at 700 persons and of the valley at 2,500.

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The applicant states that the Palo Verde Valley contains approximately 105,000 acres of fertile land susceptible of irrigation, of which about 16,000 acres are now under cultivation. The mesa above the valley is described as containing approximately 250,000 acres.

Water for irrigation is furnished by the Palo Verde Mutual Water Company by gravity from the Colorado River. There is an abundance of water and the land is described as capable of abundant production of alfalfa, cotton, wheat, barley, vegetables, berries and deciduous fruits.

The applicant states that the present tonnage from Palo Verde Valley is divided between a 60 mile haul to Glamis on the Southern Pacific and a 40 mile haul to Blythe Junction on the Santa Fe, at a cost from $10.00 to $15.00 per ton.

The applicant expresses the belief that the greater part of this valley is susceptible of intensive cultivation not unlike Imperial Valley, and that considerable tonnage may be developed not only from the agricultural output of the valley but also from gypsum mineral deposits. It is represented that the United States Gypsum Company has expressed its intention to erect a plant at deposits which it owns.

The testimony not only of the representatives of the applicant, but of the engineer of the Commission, confirms the statements in regard to the unusual possibilities of this valley for extensive agricultural development, and particularly with reference to the abundance of the water supply available from the Colorado River.

Certain companies are now engaged in the development of land projects in this valley, and the Palo Verde Mutual Water Company has expended substantial sums on its water system in the valley and on necessary levees.

The California Southern Realty Company has an option on 2,000 acres of land in the Palo Verde Valley, which come under the Mutual Water System, at $60.00 per acre, and an option on 7,000 acres of land, not embraced in the Mutual Water System, at $7.50 per acre. It is stated to be the plan of this company to market its holdings in anticipation of the introduction of transportation facilities. A large part of the valley holdings comprise the original Blythe Ranch, consisting of 40,000 acres with an extensive frontage on the Colorado River. A large section of this so-called Blythe Ranch is now embraced within the territory of the Palo Verde Mutual Water Company.

Palo Verde Valley is about 275 feet above sea level and climatic conditions are described as resembling the Imperial Valley.

This is the character of territory which the projectors of the enterprise here under consideration propose to connect by rail with the outside market centers.

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To finance this railway, the applicant in its petition, as originally filed, asks for authority to issue 10,000 shares of stock; $350,000.00 of first mortgage bonds and $400,000.00 of second mortgage bonds. The applicant proposes to sell the stock and bonds as follows:

10,000 shares at $70.00 per share	$700,000 00
$350,000 first mortgage bonds at 80	280,000 00
400,000 second mortgage bonds at 75	300,000 00
$750,000	$1,280,000 00

To provide for the construction of its railway, the applicant entered into a tentative contract with the Blythe Construction Company. The applicant submitted the following estimate of the cost of its railway:

(*a*) To construct and equip said proposed railroad and telegraph and telephone lines as per the "Final Summary Sheet," being a part of the estimate of cost filed herewith, marked "Exhibit 6," classes 1 to 57, inclusive	$1,028,056 63
(*b*) To furnish sufficient funds to meet the overhead charges, general office expenses and salaries, but excluding, however, engineers' expense and interest on bonds, as follows, to wit:	
(1) During construction one year, estimated at	25,000 00
(2) Deficiencies between said overhead charges during the first five years and the income derived from the operation of said proposed railroad, estimated at	20,000 00
(3) To pay the interest on said proposed bonded indebtedness of $750,000.00 for two years from date at the rate of six per cent (6%) per annum	90,000 00
(4) To reimburse J. M. Neeland for moneys expended by him for the benefit of said corporation, as per itemized statement filed herewith marked "Exhibit 7"	3,126 93
(5) To pay J. M. Neeland a reasonable compensation for services rendered by him in promoting said railroad	100,000 00
Total	$1,266,183 56

The applicant proposes to issue but one type of stock, but provides, however, for two classes of bonds. The first mortgage bonds, of which applicant proposes to sell $350,000.00 face value, are to be designated as first mortgage 6 per cent gold bonds limited in amount to the principal sum of $350,000.00 face value. The bonds are to bear date of July 1, 1915, and to mature in forty years, with interest at 6 per cent per annum. These bonds it is proposed to secure by a first lien on all of the properties of California Southern Railroad Company.

The second mortgage bonds are to be known as "Class B Six Per Cent Gold Bonds" and to be limited in amount to $400,000.00. These bonds are also to be dated July 1, 1915, to mature forty years after date and to bear interest at the rate of 6 per cent per annum. These bonds are to be secured by a mortgage and deed of trust upon the

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properties of California Southern Railroad Company, subject, however, to the lien of the $350,000.00 of first mortgage bonds heretofore referred to.

The hearing upon this application was held on August 4, 1914, in Los Angeles. Subsequently, on August 9, 1915, the applicant filed a further statement with this Commission requesting authority at this time to issue $385,000.00 par value of stock instead of the $1,000,000.00 of stock heretofore requested. The applicant submitted a statement of the proposed distribution of its stock and bonds as follows:

To Blythe Construction Company.

Class	Amount	Price realized
First mortgage bonds	$350,000 00 at $80 00	$280,000 00
Second mortgage bonds	400,000 00 at 75 00	300,000 00
Stock	150,000 00 at 70 00	105,000 00
Totals	$900,000 00	$685,000 00

Subscription Account.

J. M. Neeland	$25,000 00
C. H. Beggs	25,000 00
John R. Grant	25,000 00
J. H. Borders	25,000 00
J. Degen	25,000 00
Willis I. Morrison	10,000 00
Total subscription	$135,000 00
Promotion	100,000 00
Blythe Construction Company	150,000 00
Total stock now placed	$385,000 00

At the same time, applicant submitted a revised estimate of the cost of its proposed railroad as follows:

Class		
3	Grading	$77,763 00
6	Pile trestles	2,000 00
7	Culverts	6,342 70
8	Ties	104,314 00
9	Rails	252,893 88
10	Frogs and switches	1,399 68
11	Track fastenings and other material	43,540 48
12	Ballast	28,800 00
13	Track laying and surfacing	52,300 00
14	Roadway tools	1,000 00
19	Telephone and telegraph lines	8,600 00
		$678,953 74
	Profit 12½ per cent	89,356 72
	Total to contractor	$768,310 46
	Cash	76,831 05
	Contractor	$691,479 41

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The applicant also filed the following estimate of traffic earnings and expenses:

	Per month tons	Gross revenue	Per year
Freight, Palo Verde Valley	6,000	$9,000 00	
Gypsum mines	5,000	1,500 00	
Ores	5,000	3,750 00	
		$14,250 00	$171,000 00
Passenger			12,000 00
Mail			5,000 00
Express, telegraph and miscellaneous			5,000 00
			$193,000 00
Less operating expenses, 60 per cent			115,800 00
Net operating revenue			$77,200 00
Interest on bonds, $750,000 at 6 per cent			45,000 00
			$32,200 00

Under this modified plan, applicant proposes to issue $750,000.00 of its bonds and $150,000.00 of its stock to the Blythe Construction Company for a consideration placed at $685,000.00. It proposes also to sell $135,000.00 par value of its stock at $70.00 per share to persons who have heretofore signified their intention to subscribe for such stock. It proposes also to issue $100,000.00 of its stock to Mr. J. M. Neeland for his promotion services.

It will be necessary to consider separately the proposed issue of stock and bonds: *first*, to Blythe Construction Company; *second*, the sale of stock to prospective purchasers; and, *third*, the issue of stock for promotion services.

The contract which the applicant has tentatively drawn with the Blythe Construction Company provides for stated prices for various portions of the work; as, for instance, grading, rails, ties, etc., with an extra allowance of 15 per cent for contractor's profit. While the applicant states that stockholders of the Blythe Construction Company are not the present stockholders of the railroad nor the promoters of the railroad, it is, of course, obvious that there is a commingling of interest through the distribution of stock.

I believe, however, that the form of contract is not a satisfactory one from the standpoint of the railroad. There would appear to be small reason, for instance, why the railroad should contract to pay the market price for rails laid down along its right of way plus a 15 per cent profit to the contractor. The same may be said as to other materials to be purchased for the purpose of the railroad. It would appear to me to be a far more satisfactory method for the

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railway company to contract for the construction of its railway either at a stated price for a specified amount of work or all of the work; or to contract to have specified portions or all of the work done at cost to the contractor plus a specified allowance for the contractor's profit.

From an examination of the original and modified plans of the applicant, I am of the impression that this railway can be well built and equipped for initial operation for a sum not to exceed $750,000.00. The applicant itself has estimated $768,310.46, which includes a contractor's profit of 12½ per cent above the cost of all the elements entering into the construction of the line, including rails and ties.

It may, of course, be necessary to make some adjustment of this estimate of $750,000.00 if the contractor takes a large portion of his compensation in the form of stock and bonds of the applicant.

I believe it would serve no useful purpose to lay down in this opinion the estimates and figures by which this sum of $750,000.00 was determined. Instead, I suggest that the engineers of the applicant consult with the engineering department of this Commission. In this way, little difficulty should be encountered in reaching a working figure as a proper estimate of the cost of this road with a segregation of the items entering therein.

Accordingly, it would appear to be better policy for the applicant to enter into a contract to have its line of railway constructed at a cost not to exceed $750,000.00, or such other figure as may be later approved by this Commission; or in lieu of such a contract, for the applicant to enter into an agreement to have its whole line of railway constructed at cost to the contractor plus a proper allowance for contractor's profit. It will be necessary, therefore, to revise the contract as submitted to this Commission.

We will pass over the proposed sale of this stock for cash to a consideration of the proposal of applicant to issue 1,000 shares of stock at the par value of $100.00 per share to J. M. Neeland for his promotion services. Applicant has submitted as an exhibit a special memorandum descriptive of the services rendered by Mr. Neeland. The applicant has stated that Mr. Neeland, after an extensive experience in the organization of railroad enterprises both in this country, Mexico and Central America, had become interested in the project herein under consideration. It is stated that Mr. Neeland and Mr. A. E. Warmington have given their entire time and attention to this project for the past year; that Mr. Willis Morrison has also devoted practically all of his time and attention to this matter since January 1, 1915, and that for the past year Mr. C. H. Beggs, formerly connected with the "Frisco System as vice-president and general manager," has devoted the major

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part of his time extensively thereto. It is stated that it is intended to issue this promotion stock to Mr. Neeland, but it is contemplated "by those who have been actively engaged with Mr. Neeland in this matter and other projects, that they would 'be compensated in some way for the time and money that they have put into projects suggested by him, either by payment in money or stock.' It is also represented that Mr. Neeland has obtained the subscriptions to the stock of the company and has interested financiers in the enterprise. It is further stated that such promotion stock as may be issued to Mr. Neeland and by him to his assistants 'will not be sold but is to be held as an investment.'"

I believe this project must be considered on its particular merits, as it does not come under the ordinary category of public utility enterprises. Here is an endeavor to construct a railroad for a distance of forty-three miles into an undeveloped territory described largely as desert country, now very sparsely settled. It is a territory that does not yield gently to the hand of man, but requires pioneering, exploring and development with unusual hazards and risks. There must, therefore, be the lure of unusual profits. I feel also that it is proper to take into consideration the benefit to the community of this State as a whole which will accrue through the construction of this railroad. It is trite to say that California is a land of vast possibilities awaiting development. Here is an extreme case in point, where men have banded together to open up a whole section of this State—a principality in itself, long isolated and forbidding in its inaccessibility, difficulties and hazards.

I recommend that Mr. Neeland and his associates be allowed $75,000.00 par value of this stock, and this stock should be issued when the projectors have brought their enterprise to a successful conclusion by the completion of their track for the entire distance contemplated.

It may be assumed, therefore, I believe, that this enterprise can be financed for a sum not to exceed $750,000.00 and the issue of stock for promotion services in an amount not to exceed $75,000.00 par value. If we assume the applicant's basis of issue, the result will be as follows:

$350,000 first mortgage bonds at 80	$280,000 00
400,000 second mortgage bonds at 75	300,000 00
150,000 par value of stock to the contractor at 70	105,000 00
135,000 par value of stock to be sold at 70 to prospective purchasers	94,500 00
75,000 par value of stock for promotion services.	
$1,110,000	$779,500 00

This will provide for an issue of $750,000.00 of bonds, $360,000.00 par value of stock, or 3,600 shares of the par value of $100.00 per share.

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I am greatly impressed by the possibilities of the Palo Verde Valley and I believe that the enterprise herein under consideration should be given every encouragement by the State consistent with the obligations of the State to its citizens generally.

It will obviously not be advisable at this time in this proceeding to fix a minimum price at which the stock and bonds may be sold. It has been the belief of the Commission that discounts should not exceed 20 per cent. Until the final form of contract has been determined, it will not be possible to pass upon this feature of the application, but the attention of the applicant is directed to the desirability of limiting discounts to the amount herein stated. This may be accomplished by an increase in the interest rate on the bonds or by other adjustments which will accomplish the same purpose.

It will only be possible in this proceeding for the Commission to issue a preliminary order, as it will be necessary for the applicant to submit additional data and estimates upon which the Commission may base its final finding. It shall be my recommendation, however, that the Commission hold in mind the particularly desirable features of this proposed project, the unusual circumstances of the undertaking, and make its findings in accordance with the conditions here found.

Public interest requires, however, that this enterprise be not only well built, but that it be constructed at no greater cost than is actually necessary to the undertaking and for a substantial reward to the proponents for a successful endeavor. It will be wise, and the applicant has already recognized this fact, to make provision for a suspension of interest during the first two or three years after the road has been completed. It appears also that there is a certainty to some extent, and a likelihood to a greater extent, that bonuses may be paid to this company by settlers and land companies now in the Palo Verde Valley and by others who will profit therefrom through their holdings adjacent to the proposed route. As the applicant's line will connect with the Atchison, Topeka and Santa Fe Railway at Blythe Junction, the road here contemplated will afford an outlet to the world.

In its original estimate, the applicant had figured a cost of $50,000.00 for its right of way. At the hearing upon this application, the Commissioner suggested that this right of way should be donated by those who benefit through the construction of the line and suggested that if necessary such donation should be made a prerequisite to an authorization for the issue of stock and bonds herein applied for. The applicant expressed the view that it would be possible in consideration of the Commissioner's expression to obtain this right of way without cost. I believe it proper that all such savings as can be made should be made not only for the benefit of this railway but also for the people and

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public generally whom it will serve. It is only proper, therefore, that such bonuses as may be payable in any way in connection with the construction of this railway should be for the benefit of the railroad company. It is manifestly only proper that these bonuses should accrue to the railway and should be used either to assist in defraying the cost of construction or in meeting the interest payments on the bonds during the first years of operation. If the arrangement now contemplated has anticipated another use of the bonus moneys, the matter may be placed before the Commission and given consideration in connection with a proper promotion allowance that should be made.

I shall recommend that the order in this matter provide that a statement of all bonus payments heretofore made, or hereafter to be made in any way in connection with this enterprise, be filed with this Commission.

A preliminary order may be issued in this matter at this time, but a final order can be issued only after the applicant shall have submitted the further information and data essential to a definite determination of all of the issues herein involved.

The proposal of first mortgage bonds to be followed by an issue of second mortgage bonds is certainly not the best financial plan that could have been presented. It is not one which this Commission would ordinarily favor. However, the applicant has represented that it will be able to carry forward its project under this dual form of bond issue more readily than otherwise. It is the plan that the contractor taking the first mortgage bonds will be enabled to borrow on this collateral, until such time as the second mortgage bonds can be made saleable. It would have been preferable, in my opinion, either to have held the issue to a single mortgage bond, or to have provided for a short term issue of the dual series of bonds so that they might be refunded into a single issue. These are issues which I leave with the applicant, but I recommend for the purpose of this preliminary order that the application be granted, leaving a determination of the detailed considerations to the final order.

Accordingly I submit the following form of order:

ORDER.

California Southern Railroad Company having made application to this Commission for authority to issue stock and bonds, as specified in the foregoing opinion, for the purpose of constructing a standard gauge railway a distance of forty-three miles from Blythe Junction on the line of the Atchison, Topeka and Santa Fe Railway Company to Blythe in Riverside County, and a hearing having been held and it appearing that the purposes for which applicant proposes to issue said

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stock and bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that California Southern Railroad Company be granted authority, and it is hereby granted authority, to issue $350,000.00 face value of its first mortgage 6 per cent bonds; $400,000.00 face value of its second mortgage 6 per cent bonds and $285,000.00 face value of its stock, being 2,850 shares of said stock of the par value of $100.00 per share.

The stock and bonds hereby authorized to be issued shall be issued to net the applicant not less than such sums as shall hereafter be determined by supplemental order to be issued by this Commission.

It is further ordered that California Southern Railroad Company be granted authority, and it is hereby granted authority, to issue to J. M. Neeland 750 shares of its capital stock of the par value of $100.00 per share for the purpose of paying said Neeland for promotion services for himself and associates in organizing, promoting and constructing said line of railway of California Southern Railroad Company, as heretofore described, from Blythe Junction to Blythe in Riverside County, said stock to be issued to said Neeland after said railroad shall have been completed and a supplemental order approving such issue shall have been made by this Commission.

It is further ordered that none of the stock and bonds herein authorized to be issued shall be issued until the applicant shall have filed with this Commission a statement of its plan to meet interest during the first two or three years after the completion of said railway; a copy of its contract for the construction of said railway and copies of all subcontracts for the construction of said railway; and until this Commission shall have issued a supplemental order stating in detail the purposes for which the stock and bonds herein authorized shall be used, approving the contracts and subcontracts for the construction of the line, approving the deeds of trust under which the applicant proposes to issue its bonds and approving such other matters in connection with the application as the Commission may deem pertinent.

It is further ordered that the authority herein given is given only on condition that the applicant shall file with this Commission a statement of all of the bonuses and grants heretofore paid or to be paid in any way in cash or any other form to any person or corporation in connection with the construction of the railway herein under consideration; and on condition further that such bonuses or grants, unless otherwise authorized by this Commission, shall be made payable or assigned to the applicant herein, and that moneys or other considerations received in connection with said bonuses or grants shall be held by the applicant and no disposition made thereof until such disposition

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shall have been authorized by this Commission. Said statement of bonuses or grants heretofore paid or to be paid shall be filed with this Commission on or before September 30, 1915, or such other time as this Commission may designate.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of September, 1915.

DECISION No. 2744.

JEREMIAH W. LYNCH

vs.

HOME TELEPHONE AND TELEGRAPH COMPANY OF SANTA BARBARA.

Case No. 812.

Decided September 7, 1915.

E. A. Gilbert and *Albert Schuler,* for Defendant.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complaint in the above entitled action having been filed with the Railroad Commission, and legal notice of a formal hearing to be held in the city of Santa Barbara on September 2, 1915, having been given directing the interested parties to appear and be heard, and the complainant, Jeremiah W. Lynch, having failed to appear at said hearing, and the defendant having thereupon moved that the complaint in this case be dismissed,

It is hereby ordered that the complaint herein be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 7th day of September, 1915.

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Decision No. 2745.

IN THE MATTER OF THE APPLICATION OF THE SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR PERMISSION TO CONSTRUCT AND MAINTAIN A SPUR TRACK AT TWENTY-SECOND AND BRUSH STREETS IN THE CITY OF OAKLAND, ALAMEDA COUNTY, CALIFORNIA.

Application No. 1822.

Decided September 7, 1915.

Applicant applies for permission to construct a spur track across Twenty-second street and across Brush street to serve a warehouse owned by Martin Bekins. Certain adjacent property owners object to such construction, contending that it will considerably damage their property, and petition the Commission to either deny the application or award them damages.

Held, That the Commission has no power to award damages in cases of this nature, such action resting with the civil courts. That as the proposed spur is within what has been defined as the industrial limits of the city of Oakland and will be of considerable advantage thereto, application granted, applicant to stand all expense of such construction and the maintenance thereof.

W. H. Smith, for Applicant.

Martin Bekins, in propria persona.

R. J. Williams, for Protesting Property Owners.

Report of the Commission.

Gordon, *Commissioner.*

In this application the Commission is asked to make its order granting permission to applicant to construct a spur track from its Twenty-Second street line in Oakland across part of Twenty-second street and across Brush street into private property, to serve a concrete warehouse now being erected by Martin Bekins. It is contemplated to later on extend this track to serve other industries in that vicinity. Applicant filed with its application a copy of a resolution passed by the city council of Oakland at a meeting on August 2, 1915, which resolution granted to said Martin Bekins permission, upon certain conditions, to construct and maintain this track; and it appears that Mr. Bekins requested the applicant to undertake the construction and installation of this spur.

Under ordinary conditions, and where the necessary permit from the local authorities has been obtained and no general objection to the granting of the application appears to the Commission, permission is granted in such cases ex parte and without a formal hearing. In this case, however, objection was made to the granting of the application by

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certain property owners at Twenty-second and Brush streets in Oakland. In addition, the rather anomolous condition presented itself to the Commission that if this application were granted this spur track would be built and operated over by the applicant, while the holder of the permit from the city council of Oakland, and the owner of the spur, would be a private individual and not a public utility.

The application was, therefore, set down for a hearing. At this hearing Mr. R. J. Williams appeared for the protesting property owners, on the southwest corner of Twenty-second and Brush streets. He claims that this property is worth between thirty and forty thousand dollars, and that it will be damaged by reason of the construction of this spur to the extent of at least five thousand dollars. He asks that the Commission either refuse its permission for the construction of this spur or award damages in his favor to the extent claimed by him.

The Commission has no power to award damages in such a case, and an action for damages, if the spur is constructed, will have to be taken to the courts. Under section 43 of the Public Utilities Act the Commission has the exclusive power to refuse its permission or grant it upon such terms and conditions as it may deem practicable, and it may prescribe the manner, including the particular point of crossing, and the terms of its installation, operation, maintenance, use and protection.

An investigation by the engineering department establishes the facts that the Williams property is assessed for five thousand nine hundred dollars ($5,900.00), and the improvements thereon for four hundred dollars ($400.00), these improvements consisting of an old frame dwelling two stories in front and one in the rear, of about six rooms, and a shed. The Bekins property, which is to be served by this spur, is assessed for twenty-three thousand dollars ($23,000.00). It does not appear to me how the Williams property can be seriously injured by the building of this spur. The investigation also shows that it is impracticable to serve the warehouse by a spur constructed in a location different from the one shown on the map attached to the application. Physical conditions, especially as far as questions of curvature are concerned, make a change of location impracticable.

There was also introduced at the hearing an ordinance passed by the city council of Oakland, establishing the limits of what is designated as the industrial district of that city. This ordinance, and the map outlining this district, show that the location of this proposed spur track falls within the limits of that district. It is my opinion that the construction of industrial spurs in this part of the city is a necessity and in the best interests of the city of Oakland, and I recommend to the Commission that from this point of view this application be granted.

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As far as the status of the permit granted by the city council is concerned, both the applicant and Mr. Bekins agreed that petition would be made to the city council to transfer this permit to the applicant, who then would not only construct and operate over this spur but also become the owner thereof. This transfer has been made by the city council, and there has been filed with the Commission Resolution No. 11290, of August 30, 1915, permitting the construction and maintenance of this spur under certain conditions.

I therefore recommend that this application be granted, and submit the following form of order:

ORDER.

San Francisco–Oakland Terminal Railways, a corporation, having on August 4, 1915, applied to the Commission for permission to construct a spur track in and across Twenty-second and Brush streets, in the city of Oakland, Alameda County, California, and a public hearing having been held, and it appearing that this application should be granted, subject to the conditions hereinafter specified,

It is hereby ordered that applicant be and is hereby granted permission to construct its spur track at grade in and across Twenty-second and Brush streets, in the city of Oakland, Alameda County, California, to serve the warehouse property of Martin Bekins, subject to the following conditions, and not otherwise, viz:

1. The entire expense of constructing this spur track in and across Twenty-second and Brush streets, together with the cost of its maintenance thereafter in these streets, shall be borne by the applicant.

2. The track shall be constructed in compliance with the terms of the permit granted by the city council of Oakland in its Resolution No. 11290, of August 30, 1915.

3. The street crossing shall be constructed of a width and type to conform with that in Twenty-second and Brush streets in the immediate neighborhood of this spur track.

4. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said spur track as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of September, 1915.

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DECISION No. 2746.

IN THE MATTER OF THE APPLICATION OF MONTEREY COUNTY WATER WORKS FOR PERMISSION TO DISCONTINUE SERVICE IN ITS CANAL "A" BETWEEN THE SALINAS RIVER AND SAN LORENZO RIVER.

Application No. 1761.

Decided September 7, 1915.

Applicant applies for permission to discontinue in operation a certain canal between Salinas and San Lorenzo River, contending that the cost of operation is considerably in excess of any revenues that might be derived therefrom, and no objection being made by any of the former consumers therefrom, application granted, provided applicant shall transfer to property owners along the rights of way of such canal title thereto.

Morrison, Dunne & Brobeck, by *Geo. H. Hatfield,* for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application for an order of this Commission, permitting the Monterey County Water Company to discontinue use of, and service along its canal "A," between Salinas and San Lorenzo River, near the town of King City, Monterey County, more particularly described in the application and exhibits in this proceeding.

A public hearing in this matter was conducted on August 31, 1915, at Salinas, California, at which time and place the Monterey County Water Company presented evidence establishing the number of consumers that had, at various times, been served with water from this canal and in the district described, the extent of the lands irrigated, and the expense that must necessarily be incurred by the company to return the canal to and continue it in service. Officials of the company testified that owners of all lands that had at any time received service had been notified at least ten days before the hearing of the anticipated action, and the time and place of hearing.

No consumers appeared at the hearing, and the company further presented evidence that the Spreckels Sugar Company, owner of decidedly the largest area being irrigated, and Oxnard Investment Company, owner of the second largest area, had signified their acquiescence in the granting of this application. The remaining possible consumers, four in number, are believed by the company to be perfectly willing that the canal be discontinued permanently, particularly that they may be enabled to cultivate the land now occupied, and the company having

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signified its willingness to quitclaim to the present owners of the land traversed all rights of way formerly claimed by the applicant.

Further reason given for desiring discontinuance was the excessive cost of reconstructing the diversion works that were washed out in 1913 and not since replaced, and the annual cost of operating and maintaining the diversion works and the canal.

It seems to me definitely proven that there is no possibility of the canal being compensatory. It further appears that certainly the promoters of this system of which canal "A" is a part were at fault in having constructed this portion under consideration.

I submit herewith the following form of order:

ORDER.

The Monterey County Water Company having made application to this Commission for an order permitting it to discontinue service in its canal "A," between the Salinas River and San Lorenzo River, and a public hearing having been conducted in the matter, and the Commission being therefore fully apprised in the premises, it is hereby found as a fact, by the Railroad Commission of the State of California, that conditions are such that the applicant should not at any time be required to return to and continue the said canal in service.

It is hereby ordered by the Railroad Commission of the State of California that the Monterey County Water Company be, and it hereby is, granted permission to permanently discontinue service on its canal "A," hereinbefore described, provided that this order shall not be effective until the Monterey County Water Company shall have transferred by quitclaim deed to owners of property traversed by said canal, all rights of way claimed or owned by applicant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of September, 1915.

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DECISION No. 2747.

CITY OF SANTA PAULA

vs.

INTERURBAN LAND COMPANY.

Case No. 350.

Decided September 8, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The city of Santa Paula having, on September 6, 1915, stated that it did not desire to proceed further with this case,

It is hereby ordered that the complaint in this proceeding be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 8th day of September, 1915.

DECISION No. 2748.

DAIRYMEN'S CO-OPERATIVE CREAMERY ASSOCIATION

vs.

WELLS FARGO AND COMPANY.

Case No. 694.

RIVERDALE CO-OPERATIVE CREAMERY ASSOCIATION

vs.

WELLS FARGO AND COMPANY.

Case No. 695.

Decided September 8, 1915.

Complainants herein attacked the rate of defendant company on butter between Tulare, Riverdale, and Los Angeles; at the hearing defendant agreed to put into effect a rate of 70 cents per 100 pounds from Tulare and a similar mileage rate from Riverdale; subsequently it applied for a rehearing, contending that such rate was agreed upon through inadvertence, and that it was unjust to the express company, being only slightly in excess of the freight rate on butter between points named.

***Held*, At the rehearing complainants failing to substantiate their allegations that the present rates on butter were unjust, complaints dismissed without prejudice.**

M. B. Harris, for Complainants.

Alfred Sutro, for Defendant.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

OPINION ON PETITION FOR REHEARING.

This is a petition for rehearing of Cases Nos. 694 and 695, which cases were heard on March 11, 1915. Decision No. 2219 was rendered March 13, 1915, ordering the defendant to publish and file with the Commission, within twenty days from the date of the order, rates on butter between Tulare and Los Angeles, distance 231.8 miles, and Riverdale and Los Angeles, distance 274.6 miles. These rates were agreed upon between complainants and defendant, and were 70 cents per 100 pounds between Tulare and Los Angeles and on the same mileage basis between Riverdale and Los Angeles. Before the effective date of the order, the defendant asked for and was given until May 12, 1915, to comply therewith. On May 11, 1915, defendant filed a petition for a rehearing upon the ground that the rates which it had agreed to publish and file were "made through excusable inadvertence." Defendant presented the following contentions:

That the proposed rates would be unjust and would bring about an extremely heavy loss in revenue;

That if the proposed rates were used as a basis for making other butter rates, it would in some instances make an express rate lower than the freight rate concurrently in effect;

That in other instances, there would be too close a relationship between the express and the freight rate;

That a general schedule of butter rates made on the mileage basis would disrupt market conditions;

That such general schedule would disrupt the recognized and established existing differential in express rates between butter and other commodities; and,

That butter rates generally in California if based on the proposed Tulare-Los Angeles rate of 70 cents per 100 pounds would establish an unfair and improper precedent for rate-making bodies in other states.

The petition for rehearing was set for May 28, 1915, at Fresno, at which time the presiding commissioner announced that the evidence taken must be such as to enable the Commission to determine definitely whether its order theretofore made should stand, be modified or be vacated. In other words, if the evidence presented warranted the Commission in granting a rehearing such evidence would be used in disposing of the matter, thus obviating the necessity of a further hearing.

During the hearing it developed that the complainants were not prepared to introduce evidence in support of their contention that the existing butter rates were unjust and unreasonable, and in consequence the hearing was adjourned until July 7, 1915.

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Before analyzing the testimony it is pertinent to say that the contentions upon which defendant relies for a rehearing are insufficient, as I shall now proceed to show:

The defendant urges that its gross revenue would be very materially reduced. This unquestionably is true, but it in no way proves that the rates agreed upon are unjust or unreasonable. Another contention is that the rates mutually agreed upon bear too close a relationship to freight rates. This claim is made on the assumption that express rates should bear a certain relationship to freight rates. With this contention I disagree, though it is admitted that if the freight rates in and of themselves are reasonable the express rates should be in excess of the freight rates, particularly as the express rates include collection of packages at shipping points and their delivery at destination.

As was well said by the Interstate Commerce Commission in Case No. 4198, *In the Matter of Express Rates, Practices, Accounts and Revenue,* 24 I. C. C. 424:

> "A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying * * * plus a reasonable compensation for service of gathering, care and delivering, which the express company as such renders."

The other reasons urged are irrelevant, inasmuch as they have no bearing upon the reasonableness or unreasonableness of the rates.

The rates on butter between Tulare and Los Angeles and Riverdale and Los Angeles in effect at the time the complaints were filed October 6, 1914, follows:

OPEN RATE.

$1.25 per 100 pounds.

LOT OR QUANTITY RATES.

Lots of 1,000 pounds and less than 2,000 pounds, $1.15 per 100 pounds.
Lots of 2,000 pounds and over, $1.05 per 100 pounds.

BOX OR CASE RATES.

Per box or case containing not to exceed 66 two-pound squares or 132 pounds net and of exterior dimensions not exceeding 21 x 35 x 9½ inches.

Single boxes, each	Lots of 4 boxes, each	Lots of 8 boxes, each	Lots of 15 boxes, each
$2 10	$1 75	$1 61	$1 47

CUBE RATES.

Per cube of exterior dimensions not exceeding 14½ x 13½ x 13½ inches.

Single cube, each	Lots of 8 cubes, each	Lots of 15 cubes, each	Lots of 29 cubes, each
$1 05	$0 88	$0 81	$0 74

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The rate before the Commission for adjudication is $1.47 per case, containing 66 two-pound squares, in lots of 15 boxes. This rate, in the interest of brevity, will be designated "package rate." Witness for defendant, in reciting the history of this rate between Tulare and Los Angeles, stated that at the time the package rate was first established, 66 two-pound squares of butter were shipped in boxes or cases made of light wooden material weighing eight pounds, known as a throw-away package. This container and contents weighed 140 pounds gross (case 8 pounds and butter 132 pounds). The rate on butter in lots of 2,000 pounds or over is $1.05 per 100 pounds. This rate is known as a lot rate. The package rate was determined by multiplying the rate of $1.05 per 100 pounds by the gross weight of the package (140 pounds) and dividing by 100. The package rate was not applicable unless 15 or more packages (2,100 pounds) were forwarded, thus making the rate per 100 pounds the same whether shipped under the lot or package rate. When witness was asked the basis of the lot rate, he stated that the second-class freight rate concurrently in effect between the points was 70 cents per 100 pounds and that the lot rate was made 150 per cent of the freight rate. He had no knowledge as to when the lot rate became effective. From the Southern Pacific Company's tariffs on file with the Commission I find that a second-class freight rate of 71 cents per 100 pounds was in effect from November 12, 1906, to May 27, 1912. This freight rate of 71 cents per 100 pounds was reduced on the latter date to 60 cents per 100 pounds but no corresponding adjustment was made in the lot or package butter rate. The express butter rates heretofore shown between Tulare and Los Angeles were in effect prior to May 27, 1912, and were voluntarily established by the defendant. Two-pound squares are transported in boxes made of heavy wooden material, substantially built, and are returned to the shipper to be refilled. The container and contents weigh 180 pounds gross (box 48 pounds and butter 132 pounds). The package rate of $1.47 is equivalent to 81.6 cents per 100 pounds. Had defendant reduced its package rate simultaneously with the freight rate, using the same percentage originally employed in fixing the package rate, the package rate on May 27, 1912, would have been automatically reduced to $1.26. Based on the present gross weight of the package (180 pounds), the rate per 100 pounds would be 70 cents. This is the rate per 100 pounds which the defendant voluntarily agreed to publish between Tulare and Los Angeles and which it now seeks to withdraw.

Testimony was introduced by defendant to show that the cost of handling this particular traffic is in excess of 89 cents per 100 pounds and that the rate agreed upon, being 70 cents per 100 pounds, is consequently unremunerative. The cost figure is not only in excess of the

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proposed 70-cent rate but is also greater than the present package rate of 81.6 cents per 100 pounds based on the present gross weight of the package. These cost figures, being purely speculative, can not be seriously considered.

Riverdale Co-operative Creamery Association failed to appear in opposition to defendant's application for a rehearing. A representative of the Dairymen's Co-operative Creamery Association stated that it was impossible for the Riverdale Co-operative Creamery Association to be represented but that the association subscribe to the testimony presented by Dairymen's Co-operative Creamery Association. The manager for the latter association testified that its complaint was made in anticipation of what might happen in the future. No evidence was introduced in support of the contention that the present express rate is unjust and unreasonable, the only claim being that his plant is paying about $80.00 daily in express charges, which charges appeared to him to be excessive. As complainants have failed to make a proper showing I recommend that the complaints be dismissed. When complaints are lodged with this Commission complainants should come prepared to substantiate them, otherwise, as in this instance, the State as well as the utility is put to useless expense and trouble. In dismissing these cases, the Commission is not to be understood as holding that the defendant had justified the withdrawal of the proposed 70-cent rate, which it now alleges is unremunerative. The complaints are being dismissed because of the failure of complainants to make out a case. Our investigations in these proceedings show that defendant's butter rates in California are considerably out of line and it is suggested that they be readjusted so as to remove such inconsistencies as now exist.

I submit herewith the following form of order:

ORDER.

Wells Fargo and Company having filed with the Commission its petition for a rehearing in the proceedings entitled as above, and a hearing having been held thereon and the matter being now ready for decision,

It is hereby ordered that the above entitled cases be, and the same are hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of September, 1915.

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Decision No. 2749.

IN THE MATTER OF THE APPLICATION OF F. G. AIRY, AGENT FOR AMERICAN EXPRESS COMPANY, GREAT NORTHERN EXPRESS COMPANY AND WELLS FARGO & COMPANY EXPRESS FOR AN ORDER AUTHORIZING AN INCREASE OF RATES ON FIRST AND SECOND CLASS EXPRESS SHIPMENTS WEIGHING LESS THAN ONE HUNDRED POUNDS BETWEEN ALL POINTS IN CALIFORNIA.

Application No. 1847.

Decided September 10, 1915.

Applicant, representing the three express companies operating in California, applies for permission to increase first class rates on shipments under 100 pounds from 1 to 5 cents per pound, according to the segregation of weights as submitted by applicant, and to increase second class rates 75 per cent of the proposed increases on first class shipments. Wells Fargo & Company was the only one of the three companies appearing in support of such increases, and after a résumé of its revenues received prior to and subsequent to the effective date of the schedule heretofore established by the Commission in which it appears that such company is at present receiving a return of approximately 22.3 per cent on its investment when such rates were intended to yield only 10 per cent, and that the increases asked for would increase such returns to approximately 36 per cent, a rate which no rate fixing body could be expected to permit, application denied.

C. W. Stockton, for Applicants.

Seth Mann, for San Francisco Chamber of Commerce.

Oscar C. Mueller, for Merchants and Manufacturers Association of Los Angeles.

Report of the Commission.

Thelen, Gordon and Devlin, *Commissioners.*

This is a petition by F. G. Airy, agent for American Express Company, Great Northern Express Company and Wells Fargo & Company Express, for an order authorizing an increase in express rates between all points in California.

The petition asks authority to establish on California state business increases on first and second class shipments weighing less than 100 pounds, substantially as follows:

Increases on first class shipments.

	Cents
1 to 5 pounds, each	5
6 to 29 pounds, each	4
30 to 49 pounds, each	3
50 to 70 pounds, each	2
71 to 99 pounds, each	1

Increases on second class shipments.

Second class shipments are to be increased 75 per cent of the first class increases.

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These proposed increases on California state business are the same as the increases which the Interstate Commerce Commission, by order of July 14, 1915, has authorized all the express companies to make on interstate business. The Interstate Commerce Commission in its decision explains the increases on interstate rates as follows:

> "The present express rates are composed of three factors: first, an allowance of 20 cents per shipment for collection and delivery service which does not vary with the weight or distance; second, a rail terminal allowance of 25 cents per 100 pounds which varies with the weight but not with the distance; third, the rail transportation per 100 pounds, which varies with both the weight and the distance and also varies in the different zones. As stated, petitioners ask that we modify our order so as to permit of the transposition of the first and second factors. The effect of this would be to increase the collection and delivery service allowance 5 cents per shipment and reduce the present rail terminal allowance at the rate of substantially one-twentieth of a cent per pound. The proposed reduction increases with the weight of the shipment, whereas the increase of 5 cents remains stationary. As the shipment increases in weight the increase of 5 cents is gradually reduced, and when 100 pounds is reached the increase is balanced, so that on shipments of 100 pounds or over the proposed adjustment will not effect any change."

A public hearing in this proceeding was held in San Francisco on August 26, 1915. Evidence was presented by Wells Fargo & Company but none by American Express Company or Great Northern Express Company.

Merchants and Manufacturers Association of Los Angeles was represented at the hearing and stated, through its counsel, that it did not desire to protest against the proposed increase in rates or to acquiesce therein, but that it would be satisfied with whatever decision the Commission might render. San Francisco Chamber of Commerce, through its counsel, stated that it has no objection to the proposed increases, reserving, however, the right to object later if so advised. Merchants Association of San Diego sent a telegraphic protest which was later withdrawn. Mr. Frank P. Grace of Santa Rosa appeared in person to protest against the proposed increase. No ultimate consumer other than Mr. Grace appeared at the hearing.

No claim is made herein that the express rates on California state business heretofore established by this Commission are not fair, reasonable and amply remunerative. The sole basis for the application is the desire of petitioner to maintain with reference to the particular business which is the subject matter of this inquiry uniformity of rate schedules as between interstate and California state business.

The rates of Wells Fargo & Company now effective on California state business were established by this Commission on February 9, 1914,

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after an investigation of almost three years which involved an examination of more than two million individual movements of California express shipments. The rates thus established, while largely on the same basis as that established by the Interstate Commerce Commission, differ in the following respects, among others, from the interstate schedule:

1. The California rates commence with 55 cents per hundred pounds for the first sub-block, 60 cents per hundred pounds for the second sub-block, 65 cents per hundred pounds for the third sub-block and 70 cents per hundred pounds for the fourth sub-block. Beyond the fourth sub-block the rates conform to those established by the Interstate Commerce Commission.

2. Wherever an existing rate on foodstuffs or beverages was lower than the basis prescribed by the Interstate Commerce Commission, the existing rates have been continued in effect.

3. A schedule of milk rates lower than the rates prescribed by the Interstate Commerce Commission was established.

It is clear that complete uniformity as between the interstate and the California state express rates does not now exist and that the granting of this petition would not bring about such uniformity.

The express rates originally prescribed by the Interstate Commerce Commission for interstate business were effective on February 1, 1914. On March 16, 1915, after a year's trial of these rates, the express companies applied to the Interstate Commerce Commission for authority to make the increases hereinbefore referred to, which application was granted in toto. The decision of the Interstate Commerce Commission shows that the rates originally prescribed by the Interstate Commerce Commission had the following effect on the business of the following express companies during the year ending January 31, 1915:

1. Adams Express Company earned $1,105,968.92 less than enough to pay operating expenses, taxes and compensation to the railroads.

2. American Express Company earned $1,614,900.98 less than enough to pay operating expenses, taxes and compensation to the railroads.

3. Southern Express Company earned $433,573.06 in excess of operating expenses, taxes and compensation to the railroads.

4. Wells Fargo & Company earned $478,397.50 in excess of operating expenses, taxes and compensation to the railroads.

On June 30, 1914, United States Express Company, operating approximately 31,000 miles of express routes, retired from business.

The Interstate Commerce Commission, viewing the interstate express business of the entire United States as a unit, granted the increase as requested, without differentiation between the different express companies. The estimated annual increase in gross revenue will be $5,062,634.18, or approximately 3.86 per cent.

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Wells Fargo & Company, it will be observed, fared better than any of the other express companies under the rates prescribed by the Interstate Commerce Commission. This company, during the year ending January 31, 1915, earned $478,397.50 net, or almost exactly 4 per cent on the $12,000,000.00 valuation of property claimed by the company's counsel at the hearing herein, while two of the other large express companies, as already indicated, fell over $1,000,000.00 each below earnings sufficient to pay even operating expenses, taxes and compensation to the railroads.

Bearing in mind the earnings of Wells Fargo & Company under the rates prescribed by the Interstate Commerce Commission, we shall now briefly consider the earnings of that company under the rates prescribed by this Commission on California state business and the effect of the proposed increase on such earnings.

This Commission intended to establish rates which should yield Wells Fargo & Company a return of at least 10 per cent on the fair value of its property chargeable to its California state business. We found that the fair value of this property was $613,233.85. We concluded, after a most careful investigation, that rates which would yield during the first year a gross revenue 15 per cent less than that hitherto derived from Wells Fargo & Company's California state business would accomplish this result, and would be fair and reasonable rates. The gross revenue derived by Wells Fargo & Company from its California state business, prior to the reduction of rates, on the basis of the typical months of June and July, 1911, was $4,508,436.18.

In order to determine the exact effect of the rates prescribed, this Commission directed Wells Fargo & Company to keep a record of the traffic received and forwarded from March 1, 1914, to November 1, 1914, at San Francisco, Sacramento, Stockton, San Jose, Fresno, Los Angeles and San Diego, showing the revenue which would have been secured under the old rates and the revenue actually secured under the rates prescribed by this Commission. This record was kept from March 16 to September 16, 1914. A summary is as follows:

Gross Charges At.

Period	Old rate	New rate	Reduction	Per cent of reduction
March 16 to 31, 1914	$127,310 55	$112,132 89	$15,177 66	11.92%
April 1 to 30, 1914	256,362 75	222,578 07	33,784 68	13.18%
May 1 to 31, 1914	302,067 48	256,753 83	45,333 65	15.01%
June 1 to 30, 1914	308,687 71	272,613 38	36,074 33	11.69%
July 1 to 31, 1914	283,502 83	246,572 60	36,929 73	13.03%
August 1 to 31, 1914	259,895 79	224,023 52	35,872 27	13.8 %
September 1 to 16, 1914	127,988 29	110,005 89	17,982 90	14.5 %
Totals	$1,665,834 90	$1,444,679 68	$221,155 22	13.27%

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It thus appears that instead of reducing the gross revenue 15 per cent, as intended, the reduction was only 13.27 per cent. On the basis of a total gross revenue of $4,500,000.00 before this Commission's rates became effective, Wells Fargo & Company's gross revenue was thus 1.73 per cent, or $77,850.00 in excess of the anticipated revenue. Thus, the actual return on the fair value of the company's property devoted to the California state business, which value was found by this Commission to be $631,233.85, was actually at least 22.3 per cent instead of the 10 per cent intended by this Commission as a minimum.

These computations are made on two assumptions: (1) That Wells Fargo & Company's gross revenue from California state business subsequent to September 16, 1914, has not exceeded, for equivalent periods of time, the gross revenue during the first six months under this Commission's rates; and (2) that Wells Fargo & Company's operating expenses have not been decreased.

With reference to the first point, Wells Fargo & Company presented no evidence to show whether the reduction in its gross receipts on California state business subsequent to September 16, 1914, was more or less than 13.27 per cent, although it was suggested to the company informally prior to the hearing that such evidence would be illuminating. The duty of making a showing in support of this application rests on Wells Fargo & Company. In the absence of any evidence to show any change in conditions subsequent to September 16, 1914, we have the right to assume that the reduction in Wells Fargo & Company's gross revenue from California state business was at least not greater than 13.27 per cent, as shown by the returns from March 16 to September 16, 1914.

With reference to the second point, petitioner's counsel stated at the hearing that through economies Wells Fargo & Company's operating expenses were reduced over $1,000,000.00 per year subsequent to the decisions of the Interstate Commerce Commission and this Commission. It is fair to assume that a ratable proportion of this reduction is applicable to California state business. As this Commission's decision accepted in full the higher operating expenses theretofore existing, it is obvious that the economies effected in operation have still further increased the company's net profit on California state business, so that the real return on the value of the company's property devoted to its California state business is considerably in excess of the 22.3 per cent hereinbefore referred to.

Wells Fargo & Company now asks authority to place in effect on California state business the increases on first and second class shipments below 100 pounds hereinbefore set forth. The company presented

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certain exhibits to show the effect which such increased rates would have on its gross revenue from California state business. Exhibit No. 1 shows that, based on the business for the months of April to August, 1914, inclusive, at Fresno, Los Angeles, Sacramento, San Diego, San Francisco, San Jose and Stockton, the increase would amount to 2.307 per cent of the gross revenue. Exhibit No. 2 shows that, based on the business of April, 1914, at the same points, the increase would amount to 2.7 per cent of the gross revenue. Exhibit No. 3 shows that, based on the business of December 20 and 21, 1914, at Los Angeles and San Francisco, the increase would amount to 2.49 per cent of the gross revenue. Exhibit No. 4 is a copy of a telegram dated August 25, 1915, from J. W. Newlean, the company's controller, with offices in Chicago. The telegram contains, among others, the following statements:

California state transactions, year ending June 13, 1915	5,802,044
Gross revenue received from above	$3,724,307 41
Estimated increase in first class business	$82,291 70
Estimated increase in second class business	$4,546 72
Percentage increase on total gross revenue	2.33%

Accepting Mr. Newlean's estimates for the purpose of the computation, the result of the proposed increase, if granted, on California state business, would be to add an additional $86,838.42 to the company's gross revenue, or 13.7 per cent on the value of its property devoted to the California state business. The company would thus make a net annual earning of at least 36 per cent on the value of its property devoted to the California state business.

Wells Fargo & Company's counsel stated that the estimated result of the increase authorized by the Interstate Commerce Commission would be to add 3.1 per cent to the company's gross revenue. On the basis of a total gross revenue of $34,431,941.28 for the year ending January 31, 1915, the increase in gross revenue for this company annually would be $1,067,390.17. Assuming that 50 per cent of the increased revenue will be paid to the railroads for their services, the net increased revenue to Wells Fargo & Company will be $533,695.08. The effect of adding this net revenue to the company's net revenue of $478,397.50 for the year ending January 31, 1915, would be to give the company a total net revenue of $1,012,092.58, which is almost the same as the net revenue of $1,044,566.84 which Wells Fargo & Company earned for the year ending January 31, 1914, before the Interstate Commerce Commission reduced express rates. In other words, whatever the effect may have been on other express companies, Wells Fargo & Company has come out of the investigations by the Interstate Commerce Commission with a net revenue practically the same as its net revenue before the

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Interstate Commerce Commission began its activities with reference to express rates.

The addition of the increase thus authorized by the Interstate Commerce Commission will result in a return of 8.4 per cent on the $12,000,000.00 claimed by the company's counsel to represent the value of the company's property devoted to the express business. What the real value of this property is, this Commission, of course, is in no position to say. We consider it pertinent, however, to draw attention to the fact that while the rates originally established by the Interstate Commerce Commission yielded a return of only 4 per cent on the value of the property as claimed by the company, and the increased rates now authorized by the Interstate Commerce Commission will yield a return of 8.4 per cent on the same basis, the rates authorized by the California Commission were intended to yield a return of at least 10 per cent on the value of the property chargeable to California state business and actually yielded a return in excess of 22.3 per cent.

Wells Fargo & Company now asks such increase in rates that it will receive a net return of 36 per cent on its California state business, while it asked from the Interstate Commerce Commission a return of only 8.4 per cent.

This Commission has at all times desired to be fair and liberal with the utilities subject to its jurisdiction. Investments totaling in excess of $200,000,000.00 of new money have been made in California public utility securities, issued under this Commission's jurisdiction, since March 23, 1912. We believe that the Commission's desire to be just to the utilities is pointedly illustrated by the fact that we were willing to allow Wells Fargo & Company a return of at least 10 per cent on the value of its property devoted to the California business and that when the business showed a considerably larger earning we were content to permit the company to enjoy the increased earning. But when the company asks such increase in its rates as to result in a net earning of 36 per cent on the value of its property devoted to the California business, an earning over four times the earning authorized by the Interstate Commerce Commission, the company is asking more than any public authority should grant.

The application should be denied.

We submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding and careful consideration having been given to the evidence presented by petitioner, and the Railroad Commission finding that the petition is without merit,

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It is hereby ordered that the petition in the above entitled proceeding be, and the same is hereby, denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of September, 1915.

DECISION No. 2750.

CITY OF EL PASO DE ROBLES

vs.

MIDLAND COUNTIES PUBLIC SERVICE CORPORATION.

Case No. 813.

Decided September 10, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the action entitled as above having made written request that this proceeding be dismissed,

It is hereby ordered that the same be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 10th day of September, 1915.

DECISION No. 2751.

IN THE MATTER OF THE APPLICATION OF SANTA MARIA GAS AND POWER COMPANY FOR PERMISSION TO COMMENCE CONSTRUCTION WORK UNDER A FRANCHISE GRANTED TO IT BY THE CITY OF SAN LUIS OBISPO, PENDING THE DECISION OF ITS APPLICATION NUMBERED 1485, WHICH IS AMALGAMATED WITH CASE NO. 747.

Application No. 1485.

Decided September 10, 1915.

Applicant herein, having an application pending before the Commission petitioning for a certificate of public convenience and necessity authorizing the construction of a gas distributing system in the city of San Luis Obispo, the granting of which is opposed by the Midland Counties Public Service Corporation, applies

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for and is granted permission to proceed with sufficient construction work to retain its franchise pending the final determination of its application, provided that not more than the actual minimum amount of work necessary to retain such franchise shall be done.

Chickering & Gregory, by *Geo. H. Whipple,* for Applicant.

Short & Sutherland, by *W. A. Sutherland,* for Midland Counties Public Service Corporation, Protestant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

There is now pending before this Commission an application wherein Santa Maria Gas and Power Company asks for a certificate of public convenience and necessity permitting it to exercise rights and privileges under a franchise obtained from the city of San Luis Obispo. The granting of said application is opposed by Midland Counties Public Service Corporation.

In a supplemental application filed September 2, 1915, Santa Maria Gas and Power Company asks that it be permitted, pending a final decision in the above entitled matter, to do sufficient construction work to retain its rights and privileges under the franchise granted to it by said city of San Luis Obispo.

During the hearing of this supplemental application, the amount of work to be done was discussed. Counsel for applicant suggested that the company may possibly lay pipes covering not more than two blocks. In my opinion, it is not necessary to limit the actual amount of construction work to be done. It is understood that applicant shall do only such construction work as may be required by its franchise and with the distinct understanding that such work will be done for the purpose of retaining its franchise and no other. Moreover, I suggest that this Commission reserve the right to revoke the authority herein granted should it appear that applicant is undertaking more construction work than may be necessary to retain its franchise rights.

I submit the following form of order:

PRELIMINARY ORDER.

It is hereby ordered that Santa Maria Gas and Power Company be granted permission to do construction work within the city of San Luis Obispo under its franchise heretofore granted, to the extent to which such construction work may be necessary to preserve its rights and privileges under such franchise; this order, however, to be on the following condition:

It is specifically decided and ordered that such construction work shall be done to the extent and for the purpose set out herein and not otherwise, and that Santa Maria Gas and Power Company shall not claim that by virtue of such construction work it has received any right

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to exercise any rights and privileges under said franchise if this Commission shall finally deny the application of Santa Maria Gas and Power Company now pending before this Commission and to which reference has been made in the foregoing opinion. If at any time this Commission shall be of the opinion that said Santa Maria Gas and Power Company is using this order for the purpose of doing construction work within said city of San Luis Obispo in excess of the minimum necessary to comply with the terms of said franchise, this permission shall be immediately revoked.

The foregoing opinion and preliminary order are hereby approved and ordered filed as the opinion and preliminary order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 10th day of September, 1915.

DECISION No. 2752.

TUJUNGA VALLEY IMPROVEMENT ASSOCIATION

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 433.

NOBORU OMURA

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 434.

TUJUNGA TERRACE IMPROVEMENT ASSOCIATION

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 441.

Decided September 13, 1915.

Supplemental order directing defendant to proceed immediately with necessary construction work to enable it to develop at least 50 miner's inches additional water supply during the months of lowest flow from its present available sources. To submit plans for such developments within ten days and complete such work fifty-five days after the approval thereof.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL ORDER.

The Tujunga Water and Power Company was, on October 16, 1913, in decision of this Commission No. 1028 then entered, to, among other

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things, provide an additional water supply. From time to time the Commission has informally allowed the defendant to postpone definite construction work then contemplated.

There now appears to be no good reason for further delaying the construction of works necessary for the development of the additional water supply found necessary and ordered on the above mentioned date. It is not now essential that the company provide the additional water supply in the particular manner then proposed. However, whatever plan be followed, action should be taken immediately and should result in an increase of available water supply amounting to at least 50 miner's inches during the months of least flow at the company's intake.

It is hereby ordered, by the Railroad Commission of the State of California, that the order in the above entitled matters be amended, and that the Tujunga Water and Power Company be and it is hereby ordered to proceed immediately with the development of facilities for the delivery to consumers of at least 50 miner's inches additional water supply to be available during the months of least flow at the present sources available to defendant.

It is further ordered that the company file with the Commission, within ten days after the date hereof, its plan of operations in fulfillment of this order, and that the completion of the works undertaken shall occur not more than forty-five days after the date hereof.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of September, 1915.

Decision No. 2753, grade crossing; not printed. See end of volume.

DECISION NO. 2754.

IN THE MATTER OF THE REORGANIZATION OF UNITED LIGHT AND POWER COMPANY AND SUBSIDIARY COMPANIES.

Application No. 1542.

Decided September 15, 1915.

United Light and Power Company and subsidiary companies having heretofore been authorized by this Commission to perform certain acts, and the property of such companies now being in the hands of trustees, such trustees apply for permission to act under the authorizations heretofore issued to the companies; application granted.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

SIXTH SUPPLEMENTAL OPINION.

This Commission has heretofore issued its order and supplemental orders in the above entitled matter, authorizing United Light and Power

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Company (of California), Southside Light and Power Company, Consumers Light and Power Company, Equitable Light and Power Company, and Central Oakland Light and Power Company to transfer their properties and to perform certain other acts therein specified.

Application is now made to this Commission that it authorize and empower Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell "to do and perform all acts and things which said decision and order and said supplemental decisions and orders heretofore made herein purport to authorize and empower said United Light and Power Company (of California), Southside Light and Power Company and Consumers Light and Power Company to do and perform"; also that this Commission authorize and empower Albert Hanford, Luther Elkins, Charles Murphy, M. O'Connell, W. S. Tevis, and A. Biggart "to do and perform all acts and things which said decision and order and said supplemental decisions and orders heretofore made herein purport to authorize and empower said Equitable Light and Power Company and Central Oakland Light and Power Company to do and perform."

In explanation of this application it is stated that on March 1, 1915, the charters of the aforementioned companies, to wit: United Light and Power Company (of California), Southside Light and Power Company, Consumers Light and Power Company, Equitable Light and Power Company, and Central Oakland Light and Power Company were forfeited to the State of California by operation of law, by reason of the failure of said corporations to pay to the State of California the taxes assessed against their properties for the fiscal year 1914–1915.

It is further stated that on March 1, 1915, Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell constituted a majority of the board of directors of said United Light and Power Company (of California), Southside Light and Power Company, and Consumers Light and Power Company, and thereby became and now are the trustees of said United Light and Power Company (of California), Southside Light and Power Company, and Consumers Light and Power Company with power to liquidate and wind up their affairs.

The applications further recite that Albert Hanford, Luther Elkins, Charles Murphy, M. O'Connell, W. S. Tevis, and A. Biggart constituted on March 1, 1915, a majority of the board of directors of Equitable Light and Power Company and Central Oakland Light and Power Company, and that thereby they became and now are the trustees of said Equitable Light and Power Company and Central Oakland Light and Power Company with power to liquidate and wind up the affairs of said corporations.

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Accordingly request is made that the aforementioned persons be empowered to perform the acts which this Commission has heretofore in this matter authorized United Light and Power Company (of California), Southside Light and Power Company, Consumers Light and Power Company, Equitable Light and Power Company, and Central Oakland Light and Power Company to perform.

I recommend that the application be granted and submit the following form of order:

SIXTH SUPPLEMENTAL ORDER.

Application having been made that this Commission authorize Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell to do and perform all of the acts and things which this Commission has heretofore authorized United Light and Power Company (of California), Southside Light and Power Company, and Consumers Light and Power Company to do and perform; and that this Commission authorize Albert Hanford, Luther Elkins, Charles Murphy, M. O'Connell, W. S. Tevis, and A. Biggart to do and perform all of the acts and things which this Commission has heretofore authorized Equitable Light and Power Company and Central Oakland Light and Power Company to do and perform in the matter of the application herein, and good cause appearing as specified in the foregoing opinion,

It is hereby ordered that Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell be, and they are hereby authorized to do and perform all of the acts which this Commission has heretofore in the matter of the application herein, authorized United Light and Power Company (of California) to do and perform.

It is hereby further ordered that Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell be, and they are hereby authorized to do and perform all of the acts which this Commission has heretofore in the matter of the application herein, authorized Southside Light and Power Company to do and perform.

It is hereby further ordered that Albert Hanford, Luther Elkins, Charles Murphy, and M. O'Connell be, and they are hereby authorized to do and perform all of the acts which this Commission has heretofore in the matter of the application herein, authorized Consumers Light and Power Company to do and perform.

It is hereby further ordered that Albert Hanford, Luther Elkins, Charles Murphy, M. O'Connell, W. S. Tevis and A. Biggart be, and they are hereby, authorized to do and perform all of the acts which this Commission has heretofore in the matter of the application herein, authorized Equitable Light and Power Company to do and perform.

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It is hereby further ordered that Albert Hanford, Luther Elkins, Charles Murphy, M. O'Connell, W. S. Tevis, and A. Biggart be, and they are hereby authorized to do and perform all of the acts which this Commission has heretofore in the matter of the application herein, authorized Central Oakland Light and Power Company to do and perform.

The foregoing sixth supplemental opinion and order are hereby approved and ordered filed as the sixth supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of September, 1915.

DECISION No. 2755.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR AUTHORITY TO ISSUE NOTES.

Application No. 1198.

Decided September 15, 1915.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SUPPLEMENTAL ORDER.

Whereas this Commission by an order dated July 18, 1914 (Decision No. 1675), authorized Southern Counties Gas Company of California to issue $240,500.00 face value of 6 per cent three-year notes, said notes to be issued at not less than 93 per cent of the face value; and

Whereas this Commission's order dated July 18, 1914, as amended, expired on June 30, 1915; and

Whereas applicant in a supplemental application filed September 13, 1915, reports that notes in the principal sum of $90,500.00 heretofore authorized remain unsold and are now held in escrow by the Central Trust Company of Illinois, Chicago, Illinois, subject to an agreement with the purchasers of the $150,000.00 face value of notes; and

Whereas applicant asks this Commission to extend the time within which it may sell its said three-year notes heretofore authorized to and including April 1, 1916, in order that it may sell the $90,500.00 face value of notes now held in escrow with the Central Trust Company of Illinois, or any portion of the same, from time to time without further application before the Railroad Commission of the State of California

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upon the company making the proper showing in accordance with the agreement and satisfactory to the trustees of the notes; and

Whereas a public hearing has been held and it appearing to this Commission that applicant's request should be granted,

It is hereby ordered that the order of this Commission dated July 18, 1914 (Decision No. 1675), be amended to the end that the authority therein granted to the applicant to issue three-year notes in the sum of $240,500.00 shall apply to such notes as shall have been issued on or before April 1, 1916.

It is further ordered that this Commission's order dated July 18, 1914 (Decision No. 1675), and any supplemental orders modifying or amending said order of July 18, 1914, shall remain in full force and effect, except as the same may be amended or modified by this supplemental order.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of September, 1915.

DECISION NO. 2756.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY ET AL. FOR APPROVAL OF JOINT TRACKAGE AGREEMENT AT VERNON, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 1859.

Decided September 17, 1915.

REPORT OF THE COMMISSION.

This is an application, filed August 28, 1915, on the part of Southern Pacific Company for the approval by the Commission of a certain contract, dated May 13, 1915, a copy of which accompanies the application, between Southern Pacific Company, Southern Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, covering the joint use by the parties to the contract of certain spur tracks which serve the Griffin Wheel Company in the city of Vernon, county of Los Angeles, California; said spur tracks being shown on a map attached to the said contract and made a part thereof.

These spur tracks belong in part to the first two above named companies and in part to the third named company, and, according to the contract, are to be leased; the tracks of The Atchison, Topeka and Santa

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Fe Railway Company to be leased to Southern Pacific Company and Southern Pacific Railroad Company, and vice versa. The respective ownership of these tracks and real property, and the considerations to be paid for the use thereof, are set forth in the said contract.

This application is made under section 51*a* of the Public Utilities Act of the State of California, which requires the approval of the Commission of a lease of property of a railroad corporation necessary or useful in the performance of its duties to the public.

ORDER.

It appearing to the Commission that this is not a case in which a public hearing is necessary; that the terms of the contract, in so far as leases are concerned, are reasonable and equitable; that the contract contains nothing detrimental to the public interests; that the arrangements covered by the contract are mutually agreeable to the contracting parties, and that the application should be granted, and

It is hereby ordered that said application be, and the same is hereby, granted in so far as this Commission's consent is necessary.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1915.

Decision No. 2757, grade crossing; not printed. See end of volume.

DECISION No. 2758.

IN THE MATTER OF THE APPLICATION OF A. L. HARRIS FOR AUTHORIZATION TO CHANGE SEASON OF STORAGE CHARGES.

Application No. 1863.

Decided September 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject-matter of this application having been informally adjusted,

It is hereby ordered that this application be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 17th day of September, 1915.

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DECISION No. 2759.

ANDREW BERGLEY ET AL.

vs.

LANKERSHIM LAND COMPANY.

Case No. 637.

Decided September 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainants having on September 3, 1915, made written request to this Commission that this procedure be dismissed,

It is hereby ordered that this complaint be, and the same is hereby, dismissed.

Dated at San Francisco, California, this 17th day of September, 1915.

DECISION No 2760.

CABRILLO CLUB ET AL.

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 796.

Decided September 17, 1915.

Complainants herein petition the Commission to compel defendant company to reconstruct and maintain in operation that portion of its line now abandoned, running from Temecula, Riverside County, to Fallbrook, San Diego County, via Temecula Canyon, which complaint is subsequently amended to provide an alternate route via Rainbow Valley. Complainants contend, among other things, that the abandonment of this line has worked considerable hardship and caused considerable monetary loss to jobbers and others in San Diego and throughout the district traversed by such road. Also that predecessors of defendant, when such road was first proposed, obtained from property owners, considerable grants and bonuses aggregating between four and five million dollars on consideration that such road would be built and operated, title to which grants defendant has succeeded to.

Defendant contends that the road was originally substantially built, but that continual washouts kept maintenance costs at such a high figure as to make it practically impossible to operate. That trade relations between San Diego and territory affected by this line has not been seriously retarded, nor is the proposed traffic to be obtained if the line were to be placed in operation again

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anywhere near as large as estimated by complainants. It also protests the Commission's jurisdiction over the subject matter of the complaint.

After a review of the evidence tendered: That the grants of money and property made by citizens of San Diego were made with the express understanding that a connection line would be constructed through Temecula Canyon and that such a line was built and operated for a number of years, developing considerable business between various points thereon and San Diego, and that when abandoned considerable injury was done to jobbing interests of San Diego and the development of territory along the line of railway seriously retarded. That the re-establishment of railroad service between San Diego and Temecula, either via Temecula Canyon or Rainbow Valley, is required by public necessity and will greatly benefit the country affected, and that it is not unreasonable to require such construction as the prospective traffic will justify defendant in making such expenditures as are necessary to establish such connection.

Held, defendant directed to prepare and file, within ninety days, for the approval of the Commission, plans and estimates covering the construction and operation of either of the two proposed connecting routes, and to construct and operate same within twelve months after the approval of such plans.

Allen Brant and *W. C. Wilde*, for Complainants.

E. W. Camp and *U. T. Clotfelter*, for Defendant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

In this complaint, filed March 29, 1915, the Commission is asked to make its order directing the defendant to reconstruct and repair the line of railroad between the town of Temecula, in Riverside County, and the town of Fallbrook, in San Diego County, and to connect by a line of standard gauge railroad its terminals at those two points; also to establish and maintain passenger and freight service over this line and to give such other relief as may seem proper and necessary.

The complaint is made by a number of civic and commercial organizations representing a large part of the population of the city of San Diego and the affected territory outside of the city, and is signed by the Cabrillo Club, San Diego Realty Board, Federated Improvement Clubs, Chamber of Commerce of Oceanside, California; Chamber of Commerce of Northern San Diego County, Lake Elsinore Commercial Club, Wholesalers Board of Trade and Credit Association of San Diego, and the Manufacturers' Association of San Diego. In addition to these bodies, the complaint contains the signatures of a number of private persons from San Diego and other places. Petitions on file supporting the complaint from the towns of Oceanside, San Luis Rey, Bonsall, and Fallbrook alone contain 196 names. During the course of the proceedings before the Commission other commercial and civic organizations and individuals became interested in the case and took their stand with the complainants.

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The reconstruction of this railroad is asked for the following principal reasons:

First.—That the line was in operation between the years 1884 and 1891, and was built between the years 1880 and 1884 by the California Southern Railroad Company, a predecessor of the defendant in this case, largely with donations in the form of money and land, several million dollars in value, contributed by several hundred citizens of the city of San Diego and its vicinity. The complainants lay particular stress upon the moral issues involved and upon the moral obligation of the defendant to re-establish service over the abandoned line, and state that

> "said land and money were given in and with the understanding and agreement of the respective parties, giving and receiving, that the said railroad would be built, operated and maintained from the said city of San Diego by way of said Temecula Canyon route, and that there would thus be established and maintained at the said city of San Diego the terminal of a railroad running by said route to the eastern and central part of the said State of California, and thence to the central and eastern part of the United States."

Second.—That defendant has succeeded to and become the owner of the California Southern Railroad Company and of all its properties, including the bonus and subsidy as alleged in the complaint, and now owns and controls this entire property.

Third.—That the line, being cheaply and improperly built, according to the complainants, was washed out in 1891 between Temecula and Fallbrook, a distance of about 12 miles, and never rebuilt. San Diego and its vicinity, in consequence, have no railroad connection with the country north of Fallbrook and Temecula, except by way of Orange, in Orange County, a roundabout and indirect route, adding about 75 miles to the distance of the original and direct line. As a result all trade relations between San Diego and vicinity and the territory tributary to the defendant's railroad from Temecula north as far as Highgrove, Riverside County, has been destroyed and rendered impracticable.

Fourth.—That the city of San Diego was originally the natural outlet for a large portion of the country which would be reached by the rebuilding of the line under consideration. This traffic and business since the abandonment of the line has been forced away from the city of San Diego, to the great financial loss and detriment of both the back country and the city of San Diego. The country so cut off, according to the complaint, includes the towns of San Jacinto, Elsinore, Temecula and Perris, in Riverside County, with the valleys surrounding these communities, comprising together a territory of about 1,600 square miles of very fertile land, the larger portion of which is well

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settled, populated and developed, this development having occurred principally within the last six years. There were about 2,000 acres of fruit, more than 7,000 acres of alfalfa and over 40,000 acres of grain and hay in cultivation in 1914. The country is also an important poultry and live stock section. There are being worked in this territory vast deposits of cement material (75,000 tons went out in 1913), together with building and paving stone.

Fifth.—That the complainants believe that the revenue from freight and passenger traffic resulting from the reconstruction of the road would fully justify the necessary expenditure.

In its answer to the complaint the defendant, in effect, states:

First.—That it has no information or belief sufficient to answer complainant's allegation with reference to the bonus in land and money furnished by the citizens of San Diego towards the building of the railroad and for that reason denies these allegations.

Second.—That the California Southern Railroad Company between the date of its incorporation, in 1880, and the 1st of January, 1884, constructed and began the operation of a railroad from San Diego to Colton, near and south of San Bernardino; that in the spring of 1884 approximately 30 miles of this railroad, being the line through Temecula Canyon, was destroyed by floods, and was thereafter reconstructed by means of funds furnished by The Atchison, Topeka and Santa Fe Railroad Company, which company long afterwards passed into the hands of a receiver and was reorganized as this defendant, The Atchison, Topeka and Santa Fe Railway Company; and defendant denies that any portion of said railroad was constructed cheaply and improperly. It is stated that in or about the year 1882 the California Southern Railroad Company and a company known as the California Southern Extension Railroad Company were consolidated under the name of the California Southern Railroad Company; that thereafter this consolidated company was, in the year 1889, with certain other companies, consolidated into the Southern California Railway Company, the property of which last mentioned company was, in the year 1906, sold to defendant; but that Southern California Railway Company exists as a corporation at the present time under the laws of the State of California.

Defendant denies that all trade relations between the people of San Diego and vicinity and the country along and tributary to said railroad from Temecula north as far as Highgrove, Riverside County, is destroyed and rendered impracticable.

Third.—Defendant admits that by purchase it has become the owner of the railroad built by the California Southern Railroad Company, having purchased the same in the year 1906, and has been, since 1906,

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the owner of all the properties of California Southern Railroad Company; but denies that it ever became the owner of any bonus or subsidy given as alleged in this complaint or otherwise.

Fourth.—That the allegations of the complainants referring to the general desire of the people in the territory tributary to the road to have the line rebuilt, are denied, as are also the allegations as to the areas, resources and population of this territory.

Fifth.—It is denied that the prospective traffic would justify the necessary expenditure for the reconstruction of the road.

Sixth.—Defendant, in addition, refers to a previous proceeding in this same matter before the Board of Railroad Commissioners of the State of California, and shows that on or about the 10th day of April, 1895, one Montgomery M. Moulton, on behalf of the citizens of Fallbrook mentioned in this complaint, made inquiry of the Board of Railroad Commissioners concerning the rebuilding of this line, and on or about the 28th day of August, 1895, the San Diego Property Owners' Union filed with the board a request for a copy of the laws relating to the forfeiture of railroad charters, and that the board take such other action as might be proper in aiding the union in securing their legal and just rights from the Santa Fe Railroad Company in respect to the rebuilding of the road. Thereafter, on August 1, 1896, the board convened in San Diego, at which time Gilbert J. Arnold filed a complaint, complaining that the line had been abandoned through the Temecula Canyon and that the Southern California Railway Company refused to rebuild or operate its line through this canyon, and praying that the board declare it to be the duty of the Southern California Railway Company to operate its railroad through this canyon, and that suit be instituted against the corporation to compel it to perform its duty in the premises. To this complaint the Southern California Railway Company filed its answer on the same day, and the board thereupon proceeded with an investigation of the matter set forth in the complaint, both parties appearing by their attorneys; and after hearings on the first, third, fourth and fifth days of August, 1896, the board. on October 14, 1896, filed an opinion in which, among other things, it was stated that the board was of the opinion that the petition should be denied, and it was so ordered.

Seventh.—Finally, the defendant as a separate defense, demurs and alleges that this Commission is without jurisdiction over the subject-matter of this complaint.

Hearings were held in the case in San Diego on June 1st and 3d and on July 30, 1915. During the course of the hearing on July 30, 1915, and with consent of defendant the original complaint was amended. An alternative line between Oceanside and Temecula is proposed, and the Commission is asked to order the construction of this

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line in case it should decide that it is the more practicable one for the defendant to build. This so-called alternative line is described as extending from the present terminus of defendant's line in Temecula to the city of Oceanside, in San Diego County, by a route through what is known as the Viacitos or Rainbow Valley; thence to the town of Fallbrook, San Diego County; thence in a southerly and southeasterly direction into the valley of the San Luis Rey River; thence in a southwesterly direction down the valley of the San Luis Rey River through the town of Bonsall to the city of Oceanside.

In support of the alternative line complainants state that a large territory of about 200,000 acres of partly valley and partly mesa lands, and now without transportation facilities, would be opened for development, and that the new revenue created in this territory would fully justify the construction expenditure.

Defendant made its answer to this amendment, admitting the practicability of the alternative line, but making a general denial of all other allegations.

A large amount of testimony was taken during the hearing in San Diego, a number of exhibits were filed, and after the filing of briefs, both by the defendant and by the complainants, the case is now ready for decision.

It is desirable to shortly review the history of this complaint. The rebuilding of the Temecula Canyon line has been agitated continually since its abandonment in 1891. After a number of fruitless petitions to the Southern California Railway Company, the predecessor of defendant in this case and conferences with its officials, a complaint was filed by Gilbert J. Arnold, of San Diego, with the Board of Railroad Commissioners of the State of California, praying "that it be declared the duty of the Southern California Railway Company to operate its railway through the Temecula Canyon in connection with its other branches and lines, and that suit be instituted against the corporation to compel it to perform its duty in the premises."

The Southern California Railway Company denied the jurisdiction of the Board of Railroad Commissioners, answering that it would cost practically $100,000.00 to rebuild and put in good operating condition the line through the Temecula Canyon, and demanded that the complaint be dismissed. The board, after an investigation and after hearings, rendered its decision, confining its action solely to the consideration of one question. I quote from the decision of October 14, 1896:

> "* * * the only question for determination is whether this Commission shall direct the attorney general to institute proceedings against the Southern California Railway Company for forfeiture of its right to operate the whole or part of the Temecula Canyon line."

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On this question the petition was denied. I will hereafter have occasion to again refer to that decision.

After the creation of the present Commission under the Public Utilities Act of February 10, 1911, the people of San Diego and vicinity in the same year asked for relief from this Commission, and a large number of informal complaints were filed during the last three years. The Commission, as long ago as 1911, informally inquired of the defendant if there was any intention of rebuilding the line in the near future, but was informed that it was not the defendant's purpose to rehabilitate the road. The present action is the final outgrowth of all these proceedings.

It appears from the testimony of M. A. Luce in this case, that in October, 1880, Benjamin Kimball came to San Diego as attorney for Thomas Nickerson, then president of the Santa Fe Railroad Company, and together with the witness proceeded to organize the California Southern Railroad Company. The latter company was incorporated to construct a railroad from National City, in San Diego County, to a point on the Mojave River, there to connect with a transcontinental road "by the shortest commercial line practicable"; and the line by way of Oceanside through the Temecula Canyon to Colton, Riverside and San Bernardino was selected and ultimately built.

On July 23, 1880, an agreement was entered into between Frank A. Kimball, representing himself, the firm of Kimball Bros., the Chamber of Commerce, the Board of City Trustees and prominent citizens of the city of San Diego, State of California, party of the first part, and Kidder, Peabody & Co., B. P. Cheney, George B. Wilbur, Lucius G. Pratt, and Thomas Nickerson, all of Boston, Mass., party of the second part, which reads:

> "That whereas the party of the first part desires to obtain railroad connection from the bay of San Diego to the eastern part of the United States, and in and of the same, is able and willing to donate the lands, privileges and franchises hereinafter mentioned; and whereas the party of the second part is willing to furnish such connection and receive such donation,
>
> "Now, therefore, in consideration of the premises and their respective undertakings hereinafter set forth, and of one dollar to each paid by the other, receipt acknowledged, said parties mutually agree as follows:
>
> "*Article 1.*—The party of the first part will convey or cause to be conveyed by good and sufficient deeds in fee simple, free from all incumbrances except taxes due on the first Monday in January, 1881, to Henry B. Williams of San Francisco, John A. Fairchild and Warren C. Kimball, both of said San Diego and all of the State of California, trustees, the several parcels of land and the several privileges and franchises hereinafter set forth, namely:
>
> "(*a*) In behalf of Kimball Brothers, ten thousand acres of land in Rancho de la Nacion made up and selected as follows: Frac-

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tional quarter sections one hundred and seventy-five (175) and one hundred and seventy-six (176), according to survey and patent of the United States now on file and of record in the county of San Diego, said fractional quarter sections giving one mile front upon the water of San Diego Bay, and all the land running back from said water front to such a distance as to embrace in all (exclusive of land heretofore sold which does not exceed twenty acres) two hundred acres, being the land heretofore bonded to a representative of the Texas Pacific Railroad Company together with such additional quantity of land south of National City, adjacent thereto, in such convenient shape as shall be required for workhouses, machine shops, warehouses, wharves and other appurtenances of the line of railroad hereinafter mentioned; and also together with all the riparian rights appertaining to the lands agreed to be conveyed and to any and every part thereof.

"One-half equitably selected of all the unsold portions of National City, being from one hundred fifty (150) to one hundred seventy-five (175) blocks of two and one-half acres each measuring through the centers of the streets as laid down on the plan of said National City.

"Also south of National City, quarter sections 174, 179 and 160, and so much of quarter sections 173, 180 and 161 as may be necessary in the judgment of the engineers of the party of the second part, to control the channel of Sweetwater River, and then selecting alternate half miles of water front, measuring on the base line, said Kimball Brothers making the first selection, until two miles of water front (as near as may be) have been taken south of National City (making about three miles of water front in all) and then starting from said water front and running back, selecting tracts alternate (as near as may be) exclusive of those parcels already conveyed to sundry persons, until the full complement of ten thousand acres, as aforesaid, has been completed. Together with all tide lands and riparian rights belonging to or in anywise appertaining thereunto and to any and every part thereof.

"The selections above referred to shall be made by mutual agreement between said Frank A. Kimball, and the party of the second part, or in case of dispute, by three persons chosen one by each of the parties hereto, and one by the two thus chosen, and the decision of a majority of them shall be final.

"(*b*) On behalf of A. Overbaugh, O. S. Witherby and L. C. Gunn, about forty-five hundred (4500) acres of land in San Diego, being the same tract conveyed to said Overbaugh, Witherby and Gunn, by Charles S. Hamilton by deed recorded with San Diego deeds, to which reference is had for more particular description.

"(*c*) About three hundred scattered blocks and lots in the city of San Diego and about five thousand acres of land in and around the same, all of which now stand in the name of George B. Wilbur, as shown by sundry deeds in escrow in the hands of Bryant Howard and E. W. Morse of San Diego.

"(*d*) The party of the first part also agrees to contribute the sum of ten thousand dollars to be used for the purchase of right of way and lands for depots, shops, water and other stations on

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the line which the party of the second part may adopt for the proposed railroad and for the general purposes of said railroad.

"*Article 2.*—The party of the second part will form a company and will build a railroad of standard guage, four feet eight and one-half inches, from said bay of San Diego to a connection with the Atlantic and Pacific Railroad in California.

"And the party of the second part or the company to be formed as aforesaid shall begin work at the earliest practicable moment, and shall before January 1, 1881, construct twenty miles of said railway, starting from San Diego Bay, or shall perform an amount of work upon said proposed line and enter into contracts for said line in good faith, equivalent to the building of said twenty miles before said date; said work to be done and contracts made to be not less than two hundred and fifty thousand dollars in amount; and shall before January 1, 1882, construct not less than one hundred and sixteen (116) miles of said railway starting from said bay of San Diego, and shall complete said connection with the Atlantic and Pacific Railroad as soon as practicable and at a date not later than the first day of January A. D. 1884."

The balance of this agreement contains various provisions and reversion clauses not of interest in this case.

The complainants insist upon the moral, if not legal obligation, resting upon the defendant on account of this contract. Both the terms and the spirit of the agreement were scrupulously lived up to by the citizens of San Diego, and property worth several million dollars was actually donated to the syndicate referred to in the contract. The cash donations were expended in the building of the road, but the lands forming by far the more valuable part of the grant, passed through various channels, partly to the San Diego Land and Town Company, a subsidiary of the railroad company, and partly to the California Southern Railroad Company, and finally to the defendant.

This contract, in my opinion, is of much importance. It is clear that the various grants to the railroad company possessed a very large value, and testimony is in the record that at the time of the donation this value was between four and five million dollars, and that today "it would run into a good many millions," and counsel for defendant in his brief herein concedes that the donated lands are probably worth "some millions of dollars." Counsel for the defendant argues, however, that the agreement was not made with any railroad company, that no specific route was mentioned, and that the line through the Temecula Canyon was not selected until after the contract had been executed. I do not believe that the record bears out these contentions. The individual recipients of the grants were clearly understood by the grantors to be representatives of a railroad company, and the transfer of the money and the lands was made contingent upon the building of the railroad.

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I am convinced from the evidence that the people contributing to the bonuses of cash and lands fully believed that it was the Santa Fe Railroad Company that was to build the road to connect with the Atlantic and Pacific, and that San Diego was to have a direct route East; and I am also convinced from the evidence that the chief officials of the Santa Fe Railroad encouraged such belief and the belief that the California Southern Railroad Company was merely a subsidiary corporation organized for the purpose of constructing the new road.

A review of the history of the negotiations leading up to and following the Kimball-Kidder, Peabody & Co. agreement, previously referred to, is most persuasive of this fact, and Judge M. A. Luce and D. C. Reed, witnesses called by complainants, testified as to the history of the negotiations leading up to and following the execution of that agreement.

Judge Luce, who was vice-president of the California Southern Railroad Company at the time of its organization and one of the donors of the bonus, showed a most intimate knowledge of the history of the construction of the road, the men who promoted the enterprise and other facts closely related to the matter. From Judge Luce's testimony it appears that Thomas Nickerson, the first president of the California Southern Railroad Company, was at the time of the organization of that road also the president of the Santa Fe Railroad Company; that Kidder, Peabody & Co., named in the Kimball-Kidder, Peabody agreement, were the financiers of the Santa Fe Railroad Company; and that B. P. Cheney, Lucius C. Pratt and George B. Wilbur, who were also parties to said agreement, were directors of the Santa Fe Railroad Company. Joseph E. Osgood, chief engineer of the California Southern Railroad, had been an engineer of the Santa Fe Railroad in the construction of that road through the Colorado Canyon. When the Temecula Canyon track washed out in 1884, Mr. Perris, chief engineer of the Santa Fe Railroad, was sent for to give his counsel. It further appears from Judge Luce's testimony that Frank E. Kimball, one of the parties to said agreement representing the people of San Diego, was sent to Boston by the Railroad Committee of San Diego to consult with the Santa Fe Railroad Company, the result of which visit was the making of the agreement hereinbefore referred to.

D. C. Reed, who was also a contributor to the bonus for securing the California Southern Railroad and who from the evidence appeared to be in close touch with the whole situation, testified that he knows absolutely that the people of San Diego would not have subscribed one dollar for the road if they had not supposed it was practically the Santa Fe road that was going to be connected with the Atlantic and Pacific—in other words, a direct route East.

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There is also no doubt that the only line in the mind of the parties to the agreement was a line through the Temecula Canyon, a conclusion further substantiated by the definite reference in the contract to "116 miles of said railway starting from said bay of San Diego," which shall be built before January 1, 1882, toward a connection with the Atlantic and Pacific Railroad. This reference has a meaning only when taken as part of a road through the Temecula Canyon. If it were possible, as defendant implies, to consider these 116 miles as the first section of a through line by way of Santa Ana or Los Angeles, an inspection of the map will show how unlikely is such a possibility. The testimony is clear on this point. Not only was the Temecula Canyon route selected as the only favorable line, but the builders of the California Southern Railroad were aware of the difficulties of the canyon, and, in spite of them, rejected all other possible lines.

But irrespective of the facts as to this agreement, the defendant takes the stand that the Commission has no jurisdiction in regard to this contract, and that the contract is a false quantity in this case, and that the matter stands before this Commission precisely as if no such contract had been entered into. It is undoubtedly true that this Commission will undertake the interpretation of contracts only where its jurisdiction over the relationship between a utility and its patrons, present or prospective, makes such interpretation necessary; and I believe the present one may be taken as such a case. It is equally true that for reasons of public convenience and necessity, the Commission may ignore contracts otherwise lawful. Contractual relationships, however, will not be disturbed by the Commission unless its duty to interfere is plain. The attitude of the Commission in this respect has been clearly established in a number of decisions, and it will not be necessary for me to dwell further on this point.

In my opinion the complainants are justified in their insistence upon the moral obligations this defendant has incurred by taking to itself and enjoying the benefits made possible by the bounties of the citizens of San Diego in 1880. When the defendant, in 1906, by purchase acquired the property of the Southern California Railway Company, the successor to the California Southern Railroad Company, it acquired with the property all rights, privileges, franchises, immunities and other benefits and advantages. Whether or not this particular right of way through the Temecula Canyon is especially mentioned or particularly described in the deed, is, I think, of little consequence. Furthermore, it appears from the report of Mr. Sachse, chief engineer of the Commission, introduced in evidence, that the defendant, Santa Fe Railway Company, is at present maintaining and operating a telegraph or telephone line over the abandoned part of the line.

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Neither can I agree with the argument of defendant that if this Commission ever had jurisdiction it has already exercised that jurisdiction and foreclosed the question of the reconstruction of the Temecula Gap. The rule of *res adjudicata* has no application here. Even if the Commission were inclined to follow that rule, it could not apply it, for the reason that neither the facts nor the parties in the two proceedings are the same. Neither was the jurisdiction of the former commission the same as that of the present Commission.

I have above quoted from the decision of the Board of Railroad Commissioners in that case, and it must be evident that the board never made an order on the question of the reconstruction of the Temecula Canyon line. It confined itself solely to the question of whether the attorney general should be directed to institute proceedings looking towards forfeiture of the right to operate the whole or part of the Temecula Canyon line. Needless to say, the present proceeding deals with an entirely different issue.

As to the general jurisdiction of this Commission in this case there can be no doubt. Section 36 of the Public Utilities Act reads in part:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof."

This language is plain. The reconstruction or new construction of a connecting link between Fallbrook and Temecula by way of Temecula Canyon, or by a new and different line, can be regarded either as a repair in the existing plant of the defendant or as an addition, extension or improvement, but in any case the relief sought falls clearly within the scope of this section. It merely remains for the Commission to find whether or not such repair or extension ought reasonably to be made, and whether or not an order to that effect would promote the convenience of the public or in any other way secure adequate service or facilities; and these questions will be looked into presently.

Defendant asks, "Will it be insisted that this Commission has power to require the Atchison Company to organize a new corporation with power to build from Fallbrook to Temecula, and in the name of that

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new corporation build that line?" The answer is that under the law the Commission has the power to determine if and what extensions or repairs shall reasonably be made by a utility; and I do not see that the legal form or the technical method by which such extension or repair is executed need be of concern to this Commission. Whether a carrier under the language of its articles of incorporation has a right to make extensions to its lines or whether it has no such right and must either amend its charter or incorporate a new organization, is of no importance to the Commission in this connection. Were it otherwise, a utility, by the simple expedient of carefully limiting its charter, might effectively annul one of the vital provisions of the Public Utilities Act.

I have gone into the matter of contract at some length, not because this point necessarily is the deciding factor in this case, but because a good deal of importance seems to be attached thereto by both parties in the proceedings. I agree with counsel for the defendant that the Commission can decide this issue solely on the present facts and equities and that the question of building a connection between Oceanside and Temecula may stand just as it would if no contract had been entered into.

The California Southern Railroad Company in November, 1882, had completed its railroad to Colton via the Temecula Canyon, and by September, 1883, the line had been extended to San Bernardino. In February, 1884, thirty miles of track were washed out by a serious flood, this distance including practically the entire road between Temecula and Oceanside; and for nine months San Diego was left without rail communication with the rest of the country. The damage done to the railroad amounted to about $250,000.00. The company at last succeeded in raising funds by means of a second mortgage, and the line through Temecula Canyon was rebuilt on what was considered an improved location. It was fully understood at the time of the first acceptance of this location that this stretch of line would remain subject to sudden floods and washouts, and the plan had always been to replace the temporary wooden trestles across Santa Margarita River with permanent steel bridges. Such permanent construction would undoubtedly have prevented the repeated destruction of the road and would have been much less expensive in the long run. The safer plans, however, were never carried out. The record in the proceedings before the Board of Railroad Commissioners in 1896, which was introduced in evidence, relates the subsequent fortunes of the Temecula Canyon route.

After the serious damage in 1884 the line was twice more washed out, and the general manager of the Southern California Railway Company, Mr. K. H. Wade, under date of April 15, 1895, wrote to the board that since he took charge of the property, in 1889, and during

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that winter, the line was again seriously interrupted by heavy rains, but was repaired and operated during the following year. In the winter of 1890 and 1891 it was very badly washed out again, and the company's engineers estimated that it would require over $100,000.00 to put it into repair. Mr. Wade then states that his "people have not since that time felt able to appropriate so large a sum, even if it were good business policy to restore that line." In a letter to the board of September 2, 1895, Mr. Wade again declines to restore the line through the canyon; but it appears that in the mean time the road had been repaired and again put in operation as far north as Fallbrook. It is interesting to note why that was done, and I will quote from the letter referred to:

> "Since that date, by conference with the Fallbrook people, we received from them material aid in restoring the washed-out line from Oceanside to Fallbrook at an expense of between seven and eight thousand dollars. The local business in sight was such as to justify this expenditure. This work has been completed and the line is now in operation to and from Fallbrook. Upon the line between Fallbrook and Temecula, however, is where the greater part of the expense is necessary to restore the washed-out line, and our estimate is that it would require upwards of $90,000.00 to put this line in shape where we could expect it to be maintained against the first high water."

The people of Fallbrook evidently had to furnish the money before any work was done by the railroad company to restore the track to that town, and no money for repairs being forthcoming from the other communities interested in the road through the canyon, that portion of the line was left abandoned and service discontinued. It has remained abandoned ever since.

Another fact is here worthy of note. According to the statement of the general manager of the railroad company, the expense to repair the entire line between Fallbrook and Temecula was estimated at $90,000.00 in 1895. Today the company estimates, as will be shown later, that a rehabilitation of the line would cost over $600,000.00. A considerable portion at least of this difference of over half a million dollars, between the two estimates, is accounted for by the fact that the abandoned roadway has deteriorated rapidly from year to year and that with each year's delay the cost of rebuilding will go higher. After the decision to abandon the Temecula Canyon route had been reached by the Southern California Railway Company, a new line was built up the coast by way of San Juan Capistrano and Santa Ana, connecting with the Santa Fe's Los Angeles line, and a direct line east from San Diego, in the meaning of the agreement of July 23, 1880, no longer existed. From that time on the Santa Fe ceased to serve the purpose which the people of San Diego had in mind when they contributed their

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subsidy—the purpose of developing a seaport as the direct outlet of a true transcontinental railway.

I will now consider the issues from the point of view of present-day conditions. The sentiment in favor of the rebuilding of a connecting link between Oceanside and Temecula is practically unanimous, not only in San Diego and the territory immediately tributary to this city, but also throughout the valleys north and northeast of Fallbrook, as far north as Riverside and San Bernardino, and including these cities. It was, in fact, stated at the hearing by counsel for the defendant, that he would stipulate that every person in the affected territory would testify as to the desire of the people of such territory to have either the old road reconstructed or the alternative line built.

I have carefully considered the present commercial situation and the development features. It is held by the complainants that the rebuilding of the line would place the valleys and communities enumerated above within the reach of the jobbing interests of San Diego, to the distinct commercial advantage of that city. It is also claimed that it would enable passengers from the East to reach San Diego by a more direct route than is afforded at present, and that many people who are now diverted from their original intention of visiting San Diego would then visit that city. The complainants believe that the San Diego harbor territory is the natural playground for the valleys back of Temecula, and that the rebuilding of the line would enable San Diego to share in an increased summer patronage. Testimony was given to the effect that if proper transportation facilities are provided, San Diego can and will materially assist in the general development and colonization of these valleys which, up to this time, have been held back largely by reason of these lacking transportation facilities in the direction of San Diego.

In my opinion most of these claims are well founded. It is not likely, however, that through service will be established between the East and San Diego over the Santa Fe by way of Temecula Canyon. The Temecula line is only seventeen miles shorter than the line now connecting Riverside and San Diego by way of Orange, and unfavorable grades and curves are against the Temecula line to such an extent that it would be uneconomical and unwise from an operating viewpoint to run heavy and fast trains through the Temecula Canyon. It is also unlikely that better time could be made over the Temecula line than is now being made over the existing line.

While this is true of through traffic, the situation is altogether different with reference to branch line traffic, and there is no reason why a good branch line service could not be established between San Bernardino, Riverside, and San Diego by way of the Temecula Canyon.

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The outstanding fact is that San Diego urgently desires and believes it is entitled to a direct connection with the large and growing country between San Bernardino and Temecula in the north and south and between San Jacinto and Elsinore in the east and west; and that the people in that country just as urgently desire a direct rail line to San Diego and its harbor. And I am convinced that this desire and right are well founded upon the facts in this case.

The rate question is of minor importance. It is in the record, however, that the freight rates from San Diego to Temecula, Elsinore, and San Jacinto are the same as those from Los Angeles. From Perris northerly the rates are distinctly in favor of Los Angeles. Passenger rates from the territory affected to San Diego are, of course, much higher than those to Los Angeles, and there is no question but that San Diego is now suffering a considerable loss. There is the additional reason for complaint that the trip to San Diego, by way of Orange, from the places mentioned, is now a most uncomfortable one and consumes a great amount of time. Practically all passenger travel between these valleys and San Diego is, in consequence, done by automobile.

The defendant has furnished a statement showing freight and passenger earnings from the territory under consideration. This statement reveals that the total freight and passenger earnings on Coast Line stations Alberhill to Temecula, inclusive, Perris to San Jacinto, inclusive, and Fallbrook to Ysidora, inclusive, for the year ending March, 1915, amounted to $493,574.82. The stations contributing to this revenue were Alberhill, Elsinore, Ethanac, Fallbrook, Hemet, Murietta, Perris, San Jacinto, Temecula, Wildomar, Winchester, and Ysidora. This figure is significant mainly in that it shows the possibility of a very large future development of this entire region. I must say that I am particularly impressed with these possibilities for the future, not only by reason of the testimony as to the undeveloped resources and the recent growth of the country, but also by what I saw in the short time of a hasty inspection trip through those rich valleys.

The record shows that there are contained in the territory involved about 110,000 acres of arable land with only about 40,000 of this acreage at this time developed to alfalfa and trees, and supplied with water. A number of irrigation and development projects are now actually completed and others are in various stages of development; and there is no question in my mind that enough water is available to finally irrigate the larger portion of the arable acreage. The population in the country between and including San Diego and Riverside affected by the reconstruction of this connecting link, must now be in the neighborhood of 150,000.

These possibilities have appealed to others. There have been launched one or two projects at different times looking towards the

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direct rail connection of San Diego with the country under consideration. The last of these projects, the proposed line of the San Diego, Riverside and San Bernardino Railroad Company, has been the subject of an order by the Commission. No construction, however, has actually been undertaken. It is not likely that an independent road will be built, for the reason that the defendant is in the position to at any time seriously interfere with such a project by rebuilding the very line here considered, namely, the Temecula cutoff.

An inspection of the entire stretch of existing and abandoned road between Oceanside and Fallbrook and between Fallbrook and Temecula was made by the chief engineer of the Commission in company with an engineer of the railroad company; and the report of the engineering department was introduced in evidence in this case. Its features, as far as the Temecula line is concerned, can be summed up by saying that there appear to be no serious difficulties in the way of the reconstruction of this line. The old roadbed in the canyon, although abandoned 20 years ago and badly dilapidated by flood waters in many places, is, generally speaking, in good condition and can clearly be traced. There is evidence that the roadway was originally constructed at considerable cost and was made safe and secure, although the width of roadway was less than is now considered safe and good construction. Exceptions to permanent construction were evidently made in the case of bridges. There are 5 crossings of the river in the 12 miles between Temecula and Fallbrook, and all of these, it is believed, were timber trestles and of a temporary character. Is seems also evident that on account of the sudden rises and swiftness of the Santa Margarita River no such bridges could successfully withstand the rush of the current; and the department states that steel bridges are the only proper structures to place across this river in the canyon. It is pointed out that in the event of the road being reconstructed it will be desirable to relocate the line in a number of places on account of excessive curvature, and to widen the roadbed generally throughout the entire length of the canyon. In several places considerable riprapping will be necessary, but good material for this purpose appears to be close at hand. It is also noted that the department estimates that it will take at least an average of $5,000.00 per mile to rehabilitate and widen the roadbed, and that the 5 steel bridges will average about $20,000.00 each. In addition to the cost of construction the defendant would undoubtedly have to incur another considerable expense in the rehabilitation of the existing line between Fallbrook and Oceanside. Only one train per day now operates over this line, and this co-called Fallbrook branch appears to be in very poor condition. When the inspection of the line was made the river was high and every bridge, with the exception of two, was in danger of being put out of commission. Many of these

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bridges are constructed in such a way that flood waters will run over them instead of under them, so that it is expected to suspend traffic during times of high water. This condition, of course, would have to be remedied if regular through service were to be established between Riverside and San Diego by way of the canyon. The estimate is made that it will cost in the neighborhood of $50,000.00 to properly rehabilitate the existing Fallbrook branch.

The total estimate for the work necessary to insure a permanent, safe line between Temecula and Oceanside, according to Mr. Sachse, chief engineer of the Commission, is as follows:

I.	Reconstruction through Temecula Canyon:		
	1. Reconstructing roadbed, including, line changes, widening of roadbed and riprapping of slopes, 11 miles, average $5,000.00 per mile	$55,000 00	
	2. Culverts	7,500 00	
	3. Bridges, 5 steel spans complete, average length 125 feet each	100,000 00	
	4. Ties, redwood	22,000 00	
	5. Rails and fastenings, 75-pound Bessemer steel	65,000 00	
	6. Ballast, from alongside, 2,000 yards per mile at 25 cents per yard for cost of placing only	6,000 00	
	7. Tracklaying and surfacing	12,000 00	
	8. Engineering, law and other overhead expenditures, 5 per cent	13,375 00	
	9. Contingencies, 5 per cent	14,043 75	
			$294,918 75
II.	Rehabilitation and betterment work on existing Fallbrook branch		50,000 00
	Grand total		$344,918 75
Say			$350,000 00

The engineering department's estimate should be compared with an estimate for the same work made by Mr. G. W. Harris, the chief engineer of The Atchison, Topeka and Santa Fe Railway Company's Coast Lines. A summary of Mr. Harris' estimate is as follows:

Estimated cost of rebuilding line from Fallbrook to Temecula, 57,610 feet, 10.91 miles; also 2,500 feet side track at Ranchito.

Engineering		$4,000 00
Grading and protection work		141,484 38
Bridges, trestles and culverts		202,085 51
Ties		33,093 58
Rail		27,159 30
Other track material		18,163 88
Tracklaying and surfacing		11,910 52
Contingencies		21,894 86
Sub-total		$459,792 03
To this should also be added, as per Mr. Harris' estimate:		
Cost of reducing curvature from 12 to 10 degrees, between Fallbrook and Temecula	$30,000 00	
Bridges and betterment work on existing lines between Fallbrook and Fallbrook Junction, near Oceanside	167,706 00	
Grand total		$657,498 03

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The difference between the Harris and Sachse estimates is explained by the statement that Mr. Sachse estimates what it would cost to rehabilitate the line through the canyon on the present location with no changes in grades or curvature, and by making use everywhere of the existing roadbed, and allowing for steel bridges only at Santa Margarita River crossings; while Mr. Harris figures on retaining walls, the thorough reconstruction of the roadbed, line changes and reduction of all curves to a maximum of 10 degrees. He also allows a large sum for steel bridges on the existing line between Fallbrook and Fallbrook Junction, while the engineering department's estimate allows for betterment work on the Fallbrook branch only $50,000.00. The reconstruction, according to the Harris plan, evidently would result in a very good piece of work, although both estimates contemplate branch line standards only and are not made with a view to having main line traffic run over the road. Mr. Sachse testified, however, that the line could be rebuilt for $360,000.00.

There remains for consideration now only the question of the so-called alternative line. It is admitted that the principal and almost only purpose of this complaint is to re-establish, if possible, direct connection between San Diego and a territory that once did business almost entirely with that city; a territory anxious for a direct outlet to the port of San Diego, and which, in fact, at one time was part of San Diego County. Such connection being assured, the testimony shows that it will be immaterial to the majority of the people by what line the connection is made—whether by way of Temecula Canyon or any other way. Indeed, there was substantial agreement that the reconstruction of the Temecula Canyon road will not in itself tap or open up any new territory, but it also appears from the evidence that there would be a substantial increase in business from the development of the territory north and east of Temecula, a district whose growth has for years been retarded owing to lack of rail transportation. The development of the territory last referred to would be accomplished through the reconstruction of Temecula Canyon gap, or the construction of the proposed alternative line. There was a practical unanimity of feeling expressed by all the witnesses from the territory affected, in favor of the proposed alternative line.

The line of the proposed alternative route has been described heretofore. The engineering department was directed to make a report to the Commission concerning this line also, and this report is in evidence. Maps and profiles of two old surveys, covering practically this identical proposed line, were discovered in the office of the railroad company's chief engineer, and an inspection of the ground was made by the department. It is not necessary, in this opinion, to go into the relative merits of the various lines of surveys. It is sufficient to state that the alter-

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native line, from an engineering and operating standpoint, is not only entirely practicable but undoubtedly greatly superior to the canyon route. The cost of construction per mile is much lower; the route is safer and much less subject to washouts and tieups by sudden floods, and, in consequence, much less costly to maintain. M. B. Terrass, office engineer of the Santa Fe Railroad Company, who has been connected with defendant and its predecessors about 33 years, testified that he believed it would be better to build the alternative line on account of the business to be had there.

This line, from the end of the present sugar beet spur at San Luis Rey to Temecula, would be about 33 miles long and, taking the engineering department's figures, can be built for approximately $823,000.00, an average of slightly below $25,000.00 per mile. No estimate of the cost of right of way is included in this figure. It was stated at the hearing, and tenders of rights of way have since been filed with the Commission convincing me, that in case the alternative line is built complainants are willing to guarantee to furnish to the defendant the entire right of way free of expense, except for the engineering costs.

The engineering department's estimate is made up of the following principal items:

1. Grading	$248,400 00
2. Steel bridges and trestles	96,400 00
3. Culverts	13,280 00
4. Ties	82,083 00
5. Rails	87,381 00
6. Frogs and switches	1,500 00
7. Track fastenings	59,787 00
8. Tracklaying and surfacing	54,530 00
9. Tools	630 00
10. Fences	11,620 00
11. Crossings and signs	800 00
12. Telephone and telegraph line	9,960 00
13. Station buildings	2,800 00
14. Water stations	1,800 00
15. Miscellaneous buildings	4,050 00
16. Overhauling San Luis Rey spur and changing facilities at San Luis Rey Junction and at Temecula, including installation of an oil tank	10,000 00
Sub-total	$685,021 00
17. Contingencies, 10 per cent	68,502 00
Sub-total	$753,523 00
18. Engineering, 5 per cent	37,676 00
19. Law, 1 per cent	7,535 00
Sub-total	$798,734 00
20. Interest during construction	23,962 00
Total	$822,696 00

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In looking over this estimate, it occurs to me that a number of expense items could, perhaps, be reduced. The so-called overhead expenses, while proper book charges to construction, would not be high. The defendant, with its complete engineering and legal organization, could handle this job without much additional expense. Freight charges and interest during construction would call for but small actual cash expenditures and would largely be in the nature of book transactions. I will, nevertheless, assume that the engineering department's estimate is fair.

This estimate of $823,000.00 should be compared with the cost of $657,500.00 submitted by Mr. Harris for the rehabilitation of the line through the Temecula Canyon, including the betterment of the existing road below Fallbrook. If it were a question of deciding between the wisdom of expending $657,500.00 for the rehabilitation of the old line and $823,000.00 for the building of the proposed new line, there is no doubt in my mind that the construction of the new line would prove by far the better investment for the railroad company. The road would not only open up a new territory, undoubtedly resulting in considerable new business, which would increase with the future development of the country, but the maintenance expenses of the new line would unquestionably be much below the same kind of expenses on the Temecula Canyon line.

Col. Ed Fletcher testified as to the estimated tonnage of freight that might reasonably be expected and which would benefit the line under consideration. In determining this tonnage he states that he has commenced at a point approximately two miles from the end of the present terminus of the San Luis Rey spur, owned by the defendant. He states that there are about 40,000 acres of valley land in the San Luis Rey watershed, 18,000 of which are in the Warner Ranch, and approximately 2,000 in the Pauma Ranch, leaving approximately 20,000 acres of land below Pala, which is tributary to this proposed road and susceptible of intensive cultivation. He estimated that if the railroad is built at least 10,000 acres will be put into sugar beets. The sugar beet lands at San Luis Rey are now producing an average of 12 to 15 tons to the acre, so that 10,000 acres would easily produce 100,000 tons. Sugar beets, in the witness' opinion, is the best paying crop in the valley lands today.

The 20,000 acres referred to are also adapted to beans, potatoes, alfalfa, grain, etc. Colonel Fletcher claims that there is no better land in the State of California for walnuts, Bartlett pears and certain varieties of deciduous fruits like apples, peaches, etc. On this estimate, the tonnage from these 20,000 acres, within two years, provided the railroad is built, will be 150,000 tons per annum, which will increase year by year.

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The 2,000 acres of valley land on the Pauma Ranch, owing to the distance of 12 to 15 miles from the railroad, will, according to the witness, in all probability, be developed either as a grain, alfalfa, bean or dairying acreage, although a good many acres could successfully grow walnuts. The Pauma Ranch, containing approximately 13,000 acres, is now being subdivided into small ranches. It is stated that negotiations are now under way for the sale of the Warner Ranch, which is also to be subdivided into small farms. The construction of the alternative line would undoubtedly greatly facilitate the development of this ranching section. There is a good wagon road from the Warner Ranch down the San Luis Rey River to Oceanside, which facilitates transportation from the interior points.

Engineer Ellis testified that there are approximately 140,000 acres of tillable mesa lands tributary to and affected by this proposed road.

The records of the United States gauging station, at a point approximately two miles east of San Luis Rey, show an average rainfall of from 12 to 20 inches. This rainfall area includes the town of Fallbrook and the Monserrate Ranch in the Bear River Valley country. It was stated by Colonel Fletcher that there has not been a crop failure in that part of the country for twenty-five years.

At the present time nearly all of this territory is put to grain or used for pasturage, by reason of lack of transportation facilities. The testimony shows that if the road were built and this land put into hay or grain, it would be safe to figure on an average of a ton per acre, part hay and part grain, the average crop being 1½ tons for hay and ¾ ton for grain, per acre. On this basis there would be available 140,000 tons. It is estimated that there are now less than 15,000 acres of these 140,000 in cultivation.

It was testified at the hearing that all of this land will eventually be subdivided into small 10 and 20-acre tracts for the growing of deciduous fruits, and for homes. Water can be developed practically everywhere by the digging of wells, and many thousands of acres can be irrigated by the San Luis Rey River. Owing to the heavy rainfall there would be less demand for water for irrigation purposes, particularly in the growing of such crops as peaches, pears, apples, olives, etc. Within two years from the construction of the proposed road it is estimated a yield of one ton to the acre can be counted upon, and five years from the construction of the line a tonnage of 2 or 3 tons to the acre can be expected.

Attention is further called to the 420,000 acres of land tributary to the line and described by Engineer Ellis as not tillable. Practically all of these 420,000 acres is good grazing land. There are many small valleys included within this area capable of producing deciduous and citrus fruits, but for years to come this will undoubtedly remain a

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sheep or cattle country. Stock shipments, however, should bring a considerable revenue to the railroad.

Colonel Fletcher makes particular mention of the Palomar Mountain section, which is included within the 420,000 acres of untillable land referred to. This range extends from Temecula a distance of 30 miles to the Warner Ranch, and has an average elevation of between four and five thousand feet. It is maintained that there is no more scenic section in California, and that there are over five thousand acres here than can be put to cultivation, being adapted to fruit growing. Many thousands of acres are said to be heavily timbered with oak and pine forests. At the present time there is a fairly good county road through this section, and the county is intending to build a road on a grade not to exceed 5 per cent to the summit, which will develop this entire country. Surveys for this road have already been made.

Attention is called to the large increase in passenger traffic which it is claimed will naturally follow the construction of this road, first, from the settlers themselves as the country develops, and second, owing to the greater accessibility of San Diego's back country, particularly Palomar Mountain and Warner's Hot Springs.

The areas referred to in the above traffic estimates, and shown on maps introduced as exhibits, have been roughly checked by the Commission on available topographical government maps, and appear to be correct.

In addition to the general statements of the resources of the territory involved there was filed by the county tax collector of Riverside County, as Exhibit "C," a statement showing the acreage and assessed valuation of this entire area, by school districts, as it appeared on the assessment rolls of the county for the year 1914. This, in my opinion, will best show the importance of the country affected by this railroad. The statement is as follows:

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School district	Acreage	Assessed valuation
Midlands	51,791.54	$739,630 00
Moreno	15,913.30	247,130 00
Brownlands	12,623.58	131,885 00
Lakeview	15,589.48	233,455 00
Schneider	15,423.98	458,984 00
Perris	31,637.91	681,875 00
Ethanac	9,919.12	239,727 00
Olive	10,226.79	48,505 00
Winchester	13,859.93	238,933 00
Menifee	12,061.03	168,475 00
Antelope	23,825.65	127,410 00
Elsinore	14,009.71	640,661 00
Wildomar	14,074.81	308,999 00
Lake	7,206.06	140,644 00
Grand Avenue	9,257.65	86,635 00
Fruitvale	2,829.95	151,360 00
San Jacinto	20,649.60	858,509 00
Harmony	8,392.58	166,385 00
Hemet	7,265.71	1,137,992 00
Diamond	14,946.76	96,490 00
Rawson	9,664.63	16,780 00
Alamos	15,898.71	115,075 00
Murrietta	25,821.50	398,492 00
Temecula	8,901.62	88,330 00
Temecula Union	16,692.00	324,271 00
Benedict	9,050.92	183,468 00
Hyatt	8,671.18	59,515 00
Willow Glen	1,486.09	2,800 00
Tenaja	2,539.00	6,000 00
Little Lake	3,538.30	378,210 00
Totals	413,769.69	$8,476,368 00

After thorough consideration of all the evidence in this case, I am of the opinion that the so-called alternative line is a practicable one, and that it would give the desired relief to the complainants and at the same time would open and develop a splendid new country which is now devoid of and in need of railroad transportation facilities. It would, in my opinion, be reasonable to expect the defendant to build this line and also build it in preference to the route through the Temecula Canyon.

Aside from the public necessity for this connection, consideration has been given to the financial ability of defendant to rebuild or build one or the other of these lines. The defendant is one of the most important and largest carriers in the United States. It operates, owns or controls upward of 10,000 miles of railroad, 1,396 miles of which are in the State of California. On June 30, 1914, its total authorized par value of capital stock was $381,486,000.00, and the total par value of the outstanding capital stock, $310,055,530.00. The total outstanding funded debt, par value, on the same date, was $316,419,045.00, so that we are here dealing with a six hundred twenty-six million dollar cor-

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poration. Its investment in road and equipment on that date was $620,926,116.41.

Defendant's income statement for June 30, 1914, shows operating revenues for the year of $93,540,268.19, and operating expenses of $60,172,701.00, with a net railway operating revenue of $33,367,567.17. After the payment of taxes, interest on funded debt and reserve appropriations, there was paid in dividends, in that year, 6 per cent on the common stock and 5 per cent on the preferred stock, a total of $17,400,440.00; and appropriations out of income for additions and betterments were made amounting to $2,719,317.76. A credit balance to profit and loss was carried forward at the end of the fiscal period amounting to $20,569,800.81.

These figures are complete proof that defendant is in excellent financial condition. If the alternative line were built, and cost the full $823,000.00, as estimated by the engineering department, this expenditure would amount to less than 1 per cent of last year's operating revenue, or to 4 per cent of the net income. In the same year defendant expended for additions and betterments to its lines the sum of $11,797,014.89. Seven per cent of this amount would build this road. The re-establishment of this railroad connection as a financial undertaking is therefore almost insignificant in comparison with defendant's entire operations. It is of no more consequence to the Santa Fe's annual balance sheet than the building of a passenger shelter or the installation of a safety device is to a small railroad. Three days' revenue of the Santa Fe system would build it.

I am convinced that the Commission under the provisions of the Public Utilities Act, and with due regard to all the facts in the case, is required to order the re-establishment of a direct rail connection between San Diego and Temecula within a reasonable time. But while I have already stated my belief as to the relative advantages of the two lines in question, I am of the opinion that the Commission should leave the choice of lines to the defendant, as hereinafter recommended, and for that reason should not at this time direct the reconstruction of the Temecula Canyon line or the construction of the so-called alternative route.

Counsel for defendant has in his brief filed herein discussed several legal questions and contends that the Commission has no jurisdiction to make the order prayed for.

Careful consideration has been given to defendant's brief and to the several points dwelt upon. Without commenting in detail upon the points urged by defendant, I would say that in my opinion none of the objections presented by defendant should be sustained.

My recommendation will be to leave the choice of the two lines to the defendant, who will undoubtedly select the route with the most promis-

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ing prospects for a profitable future. It is fortunate that in this case, as in many other controversies between utilities and the public, the best interests of both parties coincide; and that what will be most profitable to the railroad company will also be of greatest benefit to the public.

After fully considering all of the evidence of every character before me, I find as facts in this case,

First—That certain citizens of San Diego and vicinity in 1880, under the contract referred to in this opinion, made certain large grants of money and land to a syndicate of men who agreed to build a direct line of railroad from the bay of San Diego to a connection with a transcontinental line. I find that these grants, at the time of donation, had a value of from four to five million dollars, and that this value today would be much higher. I find also that the line of the proposed railroad was clearly understood by both parties to the contract and by the people of San Diego and vicinity to be through the Temecula Canyon. I find further that the defendant in this case has become the recipient of at least a considerable portion of these grants, and today rests in the enjoyment and use of these donations. I do not, however, find that the moral or legal obligations resulting from this contract are of necessity a deciding factor in this case.

Second—That the line through the Temecula Canyon was actually built and in operation for a number of years; that the territory tributary to the line, as far north as Riverside and San Bernardino, for a long time considered San Diego and San Diego Bay as the logical and natural western terminus of the line; and that convenient and profitable trade relationship became established to the mutual benefit of all concerned.

Third—That portions of the road were washed out repeatedly, and that the Temecula Canyon portion was finally abandoned, to the great injury and loss of the entire country along the line from San Diego to Riverside. I find that in 1896 the railway through the canyon could have been rebuilt and put in operation for approximately $90,000.00.

Fourth—That ever since the abandonment of the line the people between San Diego and Riverside have consistently demanded its reconstruction, and that the building of the coast line by way of Santa Ana has not satisfied that demand or the needs of the territory affected.

Fifth—That the Board of Railroad Commissioners of the State of California in 1896 made an order in the matter of the railroad through Temecula Canyon, but that in that proceeding neither the facts nor the parties were the same as in this action; and that the order made by the board at that time was not an adjudication of the matters now before this Commission, nor did it nor does it prevent or preclude the making of any order by this Commission herein.

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Sixth—That the defendant's denial of this Commission's jurisdiction in this case is not well founded and that this Commission has jurisdiction of the parties and subject matter herein, and has jurisdiction to make the order hereinafter set forth.

Seventh—That the population and the territory along the road from San Diego to Riverside, by reason of the abandonment of the Temecula Canyon line for a period of nearly 20 years, have suffered great injury, and the development of a large portion of this area has been seriously retarded.

Eighth—That the re-establishment of a direct connection between San Diego and Temecula, either by way of the Temecula Canyon or by way of the so-called alternative line, both of which said lines are described in the preceding opinion, is a public necessity and will greatly benefit all of the country affected by this railroad.

Ninth—That it is reasonable to order the defendant to make such connection, and that the present and prospective traffic justify the expenditure of the sum of money necessary to establish this connection.

I submit herewith the following form of order:

ORDER.

Cabrillo Club, a corporation, et al., having filed their complaint, and likewise their amendment to the complaint, against The Atchison, Topeka and Santa Fe Railway Company, a corporation, and answers having been filed and hearings having been held, and the case being submitted and now ready for decision, and basing this order on the foregoing findings of fact and on each additional statement of fact contained in the opinion preceding this order, each of which statements is hereby declared to be a finding of fact for the purpose of this order.

It is hereby ordered that defendant shall within ninety (90) days from the service on it of this order, present to the Commission for its approval plans and estimates, together with maps and profiles, for a direct connecting line of standard gauge railroad between Oceanside and Temecula, either by means of the present existing line between Oceanside and Fallbrook and thence by way of Fallbrook and Temecula Canyon, or by means of the so-called alternative line described in the foregoing opinion, or by means of a route substantially following the so-called alternative line; and shall within twelve (12) months after the date of approval by the Commission of such plans, estimates, maps and profiles, construct, complete and put into operation such line of railroad and establish thereover regular passenger and freight service.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1915.

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DECISION No. 2761.

IN THE MATTER OF THE CONSOLIDATED WATER COMPANY OF POMONA FOR AUTHORIZATION TO SELL CERTAIN SURFACE RIGHTS IN REAL ESTATE.

Application No. 1823.

Decided September 17, 1915.

Applicant applies for and is granted permission to dispose of approximately 150 acres of land to which it retains all rights to water, proceeds to be used in liquidation of its floating indebtedness.

Parker & Parker, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application for authority to dispose of the agricultural rights, called surface rights, to certain lands originally acquired as a protection to the pumping zone from which applicant secures its water. At the time of the hearing in Application No. 1463, before Commissioner Edgerton, in Los Angeles, which application was for the authorization of a bond issue of $225,000.00, the matters arose which are the subject now of this separate proceeding. A former bond issue of $175,000.00 was secured by a mortgage covering all the land in the pumping zone and although the surface rights to 110 acres have been sold, yet they have never been released from the lien of the deed of trust securing the payment of the $175,000.00.

Permission is asked in this application to dispose of the surface rights to 150 acres, including the 110 acres mentioned above, the sale of which occurred prior to the effective date of the Public Utilities Act. The 40 acres as yet unsold, are suitable for citrus culture and are in no way necessary for successful operation of the utility. It appears that there is no objection on the part of the city of Pomona to the sale of these surface rights.

The description of the 150 acres is as follows:

> Lots 1 and 2 and the north one-half and the southwest one-fourth of lot 3; also the southeast one-fourth of the northeast one-fourth of section 3; all in township 1 south, range 8 west, S. B. M.

There are certain reservations which are to be made in the deeds to this land, principally regarding the title to the water which may be developed thereon. Nothing is said herein as to the value of the rights retained by applicant. If any such rights or value does exist, I do not

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consider this proceeding to be the proper one for such discussion. It was stipulated at the hearing in this application that whatever order might be made by the Commission would not be construed as a finding that any rights or values existed in addition to the rights herein sought to be transferred, leaving such to be the issue of some future determination if ever brought before this body.

Applicant has stipulated that it will apply the proceeds from the sale of the surface rights to liquidating a part of its current floating indebtedness.

I recommend the following form of order:

ORDER.

Consolidated Water Company of Pomona, having made application for permission to dispose of certain surface rights to lands adaptable to citrus culture, and a hearing having been held and being fully apprised in the premises,

It is hereby ordered that Consolidated Water Company of Pomona be authorized to dispose of the surface rights to the following described property:

> Lots 1 and 2 and the north one-half and the southwest one-fourth of lot 3; also the southeast one-fourth of the northeast one-fourth of section 3; all in township 1 south, range 8 west, S. B. M., comprising 150 acres, more or less.

It is hereby further ordered that applicant apply the proceeds from the sale of said surface rights to the liquidation of a part of its current floating indebtedness.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1915.

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DECISION No. 2762.

J. W. BLOOM

vs.

SPRING VALLEY WATER COMPANY.

Case No. 739.

Decided September 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the action entitled as above having on September 10, 1915, made written request that this proceeding be dismissed,

It is hereby ordered that the same be, and it is hereby, dismissed without prejudice.

Dated at San Francisco, California, this 17th day of September, 1915.

DECISION No. 2763.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES AND SAN DIEGO BEACH RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF A NOTE FOR FIFTEEN THOUSAND DOLLARS.

Application No. 1815.

Decided September 17, 1915.

Applicant authorized to issue its promissory note in the sum of $15,000.00 for a period of two years with interest at not to exceed 6 per cent, or to issue such note and renewals thereof when required, provided that the original period and the renewals do not exceed two years.

REPORT OF THE COMMISSION.

This is an application by Los Angeles and San Diego Beach Railway Company for authority to issue a promissory note to the American National Bank of San Diego in the principal sum of $15,000.00, with interest at the rate of 6 per cent per annum, for the purpose of refunding a note of like amount to the same payee.

The affairs of this corporation have been reviewed by this Commission in connection with Application No. 1240, Decision No. 1888, to which reference is hereby made.

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For the fiscal year ending June 30, 1915, the applicant reported as follows:

Gross revenue	$71,339 58
Operating expenses	61,197 66
Net revenue	$10,141 92
Taxes	3,852 66
	$6,289 26
Interest, rentals, etc.	18,318 78
Deficit	$12,029 52

This applicant has heretofore been given authority to issue bonds for the purpose of electricizing its line of railway. It has sold only $5,000.00 of these bonds, but has not been able to carry through any comprehensive plan of financing.

The note which the applicant proposes to refund was issued for capital purposes and I therefore recommend that the application be granted, and submit the following form of order:

ORDER.

Los Angeles and San Diego Beach Railway Company having applied to this Commission for authority to issue a note as specified in the foregoing opinion, and a hearing having been held and it appearing that the purposes for which it is proposed to issue said note are not reasonably chargeable to operating expenses or to income.

It is hereby ordered that Los Angeles and San Diego Beach Railway Company be granted authority and it is hereby granted authority to issue a promissory note in the principal sum of $15,000.00, payable not to exceed two years from date, with interest at a rate not to exceed 6 per cent per annum, said note to be used to refund a note heretofore issued by the applicant to American National Bank of San Diego.

It is further ordered that the applicant be and it is hereby granted authority to issue renewals of the note herein authorized to be issued, provided the maturity of any of the notes issued under this order shall not be later than two years from date.

The applicant shall report to this Commission within thirty days after any of the notes herein authorized to be issued shall have been issued, stating the terms and conditions of said notes and the date of maturity thereof.

The authority herein granted shall apply to such notes as shall have been issued on or before December 31, 1916.

The authority herein granted is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 17th day of September, 1915.

DECISION No. 2764.

IN THE MATTER OF THE APPLICATION OF PACIFIC FREIGHT TARIFF BUREAU, F. W. YOMPH, AGENT, TO AMEND BUREAU EXCEPTION SHEET NO. 1-D TO PROVIDE THAT BRICK LOADED ON FLAT CARS WILL BE ACCEPTED ONLY WHEN LOADED IN PYRAMID FORM AND PROTECTED BY END BOARDS AND SIDE BOARDS.

Application No. 1858.

Decided September 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant in the above entitled proceeding having requested that the application be dismissed,

It is hereby ordered that the same be, and it is hereby, dismissed, without prejudice.

Dated at San Francisco, California, this 17th day of September, 1915.

DECISION No. 2765.

IN THE MATTER OF THE APPLICATION OF PANAMA ACRES SYNDICATE FOR AN ORDER AUTHORIZING RATES TO DOMESTIC CONSUMERS IN PANAMA ACRES, SUCH RATES TO BE INCREASES OVER THOSE AT PRESENT IN EFFECT.

Application No. 1812.

Decided September 17, 1915.

Applicant, contending that its present schedule of rates for water is non-compensatory, applies for permission to increase same and after an investigation the

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following schedule is established to become effective October 1, 1915: $1.50 per month minimum for 1,000 cubic feet or less, 8 cents per 100 cubic feet for next 1,000 and 5 cents per 100 cubic feet for all over 2,000 cubic feet.

Andrews, Toland & Andrews, for Applicant.

B. H. Burke and *J. K. Detrich,* for the Protesting Consumers.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application to establish a new schedule of water rates in Panama Acres, a tract of some 240 acres adjoining the city of Los Angeles on the south. This tract was placed upon the market in acre lots in 1910 by the syndicate and approximately the entire holdings have been disposed of, the syndicate holding now only about 5 acres. The settlement of the tract has not been as rapid as the sales, as only twenty-three consumers are located and about twenty-five acres cultivated.

The rates established by the syndicate when they opened the tract, were:

$1.50 per month, minimum, for 3,000 cubic feet or less.
0.07 per 100 cubic feet excess.

About June, 1915, a circular was sent to the consumers, stating that after July 10, 1915, the rate would be changed to $1.50 for 1,200 cubic feet and 10 cents per hundred feet excess. Soon after the date of the circular, the attention of the syndicate was drawn to the legal requirements necessary before a change of rates is possible, with the result that this action was brought before the Commission.

The use of water on the acre lots in this tract is alleged by the syndicate to be for domestic purposes, but, generally, when lots are sold off in the acre size, some agricultural use is contemplated of the land not occupied by dwellings. Garden truck and fruit trees have here been planted by the consumers. The system of pipes is of 6, 4, and 3 inch diameter. Service of water through these mains for irrigation use in any substantial quantity is not practical.

The consumers appeared at the hearing and stated their desire to have an irrigation rate established. They considered the term "irrigation use" to embrace water for trees and gardens but not for household or lawn purposes.

The statements of the applicant as to their revenues and expenses for the past twelve months were not challenged by the consumers, and I, too, think that the same are very reasonable. Applicant did not ask for any interest return upon the cost of the water system, approximately $10,000.00, but did ask that the operating expenses be met by the reve-

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nues. The following is the financial statement for the year ending June 30, 1915:

Expenses—		
Electric power	$278 50	
Supplies and repair	79 24	
Pump man's wages at $16.00	192 00	
Office expense at $12.50	150 00	
		$699 74
Revenues—		
From water sales		428 88
Deficit		$270 86

It is no more than reasonable to expect that some time must elapse after the opening of a tract before the water utility part of the business can care for itself. Here we have a possible total of 234 consumers, and only 10 per cent of that number settled on the tract. In considering whether or not twenty-three consumers should now bear the entire operating expenses the reasonableness of the rate should be a factor and the rate should not be based entirely upon the percentage settlement of the tract.

The minimum of 3,000 cubic feet heretofore enjoyed by the consumers is about three times the average use of the ordinary household. The average rate for such service is from $1.25 to $1.50 per month. Irrigation water in communities near Panama Acres is generally charged at the rate of 3 cents per hour-inch, which is equivalent to 4 cents per hundred feet. Heretofore the rate has been 7 cents per hundred cubic feet, and I am inclined to consider such a rate too high for the largest use of water now developed in Panama Acres.

Data as to the average metered use of the consumers was submitted by one of this Commission's hydraulic engineers. It was shown that there was a 12 per cent increase in use during the past year. In order to show the effect on the rates of returning to applicant its full operating expense, a trial rate of $1.50 for 1,000 cubic feet and 10 cents per hundred cubic feet excess was shown to be necessary, but this I consider too high a rate for the consumers to pay.

Taking all the matters into consideration which were advanced by the applicant and by the protestants in this proceeding, I find as a fact that the present rates, in so far as they differ from the rates herein found to be just and reasonable, are unjust and non-compensatory and that the rates herein recommended are just, fair, reasonable and compensatory. I will recommend that the minimum quantity of water be lowered to 1,000 cubic feet per month, and establish a sliding scale of rates for the excess use over 1,000 cubic feet. While I realize that the revenues under

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such a rate as I recommend will not fully return to applicant its operating expense, I feel that the syndicate should yet bear a share in the cost of running their system. I therefore find as a fact that reasonable and just rates to be collected by Panama Acres Syndicate, are:

$1.50 per month, minimum, for 1,000 cubic feet or less.
0.08 per 100 cubic feet excess for the next 1,000 cubic feet.
0.05 per 100 cubic feet for all excess used over 2,000 cubic feet per month.

I recommend the following form of order:

ORDER.

Panama Acres Syndicate, having made application to this Commission for an order authorizing a change in rates heretofore in effect in Panama Acres, and a hearing having been held and it appearing from the foregoing opinion and findings of fact that the rates heretofore collected by Panama Acres Syndicate are unjust and unreasonable and that the following schedule is just and reasonable,

It is hereby ordered that Panama Acres Syndicate be authorized to charge the following rates for water furnished by them to Panama Acres:

$1.50 per month, minimum, for 1,000 cubic feet or less.
0.08 per 100 cubic feet for the next 1,000 cubic feet.
0.05 per 100 cubic feet for all excess used over 2,000 cubic feet per month.

It is hereby further ordered that these rates shall become effective on and after October 1, 1915, providing Panama Acres Syndicate, prior to that date, shall file with this Commission a schedule embracing the rates herein authorized.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco this 17th day of Semptember 1915.

Decision No. 2766, grade crossing; not printed. See end of volume.

DECISION No. 2767.

IN THE MATTER OF THE APPLICATION OF COSUMNES IRRIGATION COMPANY FOR ORDER AUTHORIZING ISSUE OF STOCK TO GEORGE S. HENRY.

Application No. 1741.

Decided September 18, 1915.

Applicant, having entered into an agreement with George S. Henry agreeing to issue to him certain shares of stock in return for work done towards the

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improvement and extension of its system, and the payment of such stock now being due, it applies for and is granted permission to issue 3,000 shares of capital stock of the par value of $1.00 per share for such purpose.

James M. Berry, for Applicant.

REPORT OF THE COMMISSION.

This is an application on the part of the Cosumnes Irrigation Company for an order authorizing the issue by the company of 3,000 shares of its capital stock, of the par value of $1.00 each, to George S. Henry, for services rendered by him in accordance with a certain written contract of employment of the said George S. Henry by the applicant, a copy of which contract designated as Exhibit "A" was attached to the petition herein.

Applicant was incorporated under the laws of this State in November, 1907, with an authorized capital stock of 250,000 shares of the par value of $1.00 each, of which a total of 120,000 shares were issued at par. Applicant, soon after its incorporation, bought from the Amador and Sacramento Canal Company the ditches, water rights and real estate belonging to that company, for which applicant paid approximately $113,000.00. The principal ditch, known as the Michigan Bar ditch, located in eastern Sacramento County and western Amador County, was built in the early fifties for use in connection with hydraulic mining. It was so used for many years and later was used to some extent for irrigation purposes. Before the contract of employment of Henry was entered into, the applicant had bought in under an assessment 33,000 shares of its capital stock for the sum of $660.00, leaving a total of 87,000 shares outstanding.

The immediate circumstances surrounding the employment of Henry were as follows: Applicant had never been able to make any profits, but on the contrary was not even able to keep its ditches in repair from its current receipts and had been forced to levy assessments from time to time. Moreover, it was not able to use more than a comparatively small portion of its ditches or water rights.

In May or June, 1911, Mr. Henry met the officers of the Cosumnes Irrigation Company and after an investigation of its property drew up a contract with them by the terms of which he was to use his best efforts to rehabilitate and extend the company's property, for which he was to receive as compensation the sum of $90.00 per month and a certain payment of stock depending upon the length of time he might be employed by the company. The contract also provided that in case of a sale of the property he should receive enough additional stock to make a total of 13,000 shares, which would then represent 13 per cent of the total stock outstanding.

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In August, 1911, Henry entered upon his employment as provided for in said contract and continued working for applicant until September, 1912, devoting his exclusive time to said employment. The contract, through inadvertence, however, was not actually signed until the fall of 1912. His work included an examination of the properties and system, a canvass of the entire territory served by this system and a general study of a plan to rehabilitate the property. Thereafter engineers were placed in the field under Henry's direction, an irrigation system was mapped out, estimates prepared, and a detailed report made.

In accordance with the terms and conditions of said contract, 2,500 shares of the capital stock of said company were issued to said Henry on January 1, 1912, and there are now due him 3,000 additional shares of the company's stock.

While not atually signed before the Public Utilities Act became operative, this contract was evidently made in good faith; and while not in any way bound by such a contract this Commission would naturally wish to allow the parties to carry out the terms of such agreement when the same are consistent with the public interest. As to the provision for a further issue of stock to Henry in event of a sale of the property, this question is not now before the Commission.

We believe that the request herein made for the Commission to authorize the said issue of 3,000 shares of stock is a reasonable one and that the application should be granted.

ORDER.

Cosumnes Irrigation Company having applied to the Railroad Commission of the State of California for an order of the Commission authorizing the issue by said company of 3,000 shares of its capital stock to George S. Henry in payment for personal services rendered to said company by said Henry, and a public hearing having been had and it appearing that the request of the applicant is a reasonable one and that the purposes for which said stock is to be issued are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered as follows:

1. Cosumnes Irrigation Company is hereby authorized to issue to George S. Henry 3,000 shares of its capital stock of the par value of $1.00 each.

2. The authority hereby given to issue said stock shall apply to such stock as shall have been issued on or before November 1, 1915.

3. The issue of this stock and the action of this Commission in permitting its issue shall not be binding upon this Commission or any other rate fixing body as affecting the valuation of said property for rate fixing purposes or otherwise.

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4. Said company shall keep a true and accurate record of the issue of said stock and shall on or before the twenty-fifth day of the month following the said issue of said stock make a verified report to the Commission in accordance with the Commission's General Order No. 24, setting forth the disposition of such stock, the conditions of such disposition and for what purposes the same was issued.

Dated at San Francisco, California, this 18th day of September, 1915.

DECISION No. 2768.

IN THE MATTER OF THE APPLICATION OF THE OCEAN SHORE RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE THE MAINTENANCE OF AN AGENT AT ITS STATION OF SALADA.

Application No. 1642.

Decided September 18, 1915.

Applicant applies for permission to discontinue maintaining an agent at the station of Salada Beach, and after a review of the revenue it receives from shipments moving through this point, and it appearing that such revenues are so low as not to warrant the maintenance of an agent, application granted, provided, that the Commission reserves the right, if future conditions warrant, to modify this order.

I. N. Randall, for Applicant.

D. E. Besecker, for Protestants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application of the Ocean Shore Railroad Company for permission to discontinue the maintenance of an agent at its station of Salada, it being alleged that the revenue derived from the station does not justify the expense involved, and that the present financial condition of the applicant is such that the most stringent economy is necessary. A public hearing was held on August 3, 1915, and the matter is now ready for decision.

The station of Salada is located 14.3 miles from San Francisco and is the first station out of San Francisco at which an agent is maintained. A considerable amount of subdivision has been made in the territory immediately adjacent to the station and town lots have been on the market for some time, it having been the intention to make a beach and summer resort at this point, same being conveniently reached from San Francisco and but forty-five to fifty minutes being required to make the

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journey. The development of Salada as a resort and a community of seashore homes has not materialized to the extent anticipated by those interested in the property. The country adjacent to the town is farmed and vegetables and garden truck are the principal products.

The carload business at this station is very light, there having been no carloads forwarded during the six months ending June 30, 1915. During the same period there were seven carloads received, two of lumber, three of manure, and two of crushed rock for highway purposes. An analysis of the revenue derived from Salada station for the six months' period ending June 30, 1915, shows same to have originated from the following sources:

Passenger			$323 95
Freight—	*Tonnage.*	*Revenue.*	
Less than carload received	436,100	$419 69	
Less than carload forwarded	841,580	929 65	
Carloads received—7 cars	518,080	127 55	
Carloads forwarded—none			
Total freight	1,795,760	$1,476 89	1,476 89
Total revenue			$1,800 84

The salary paid to the agent at this point is $70.00 per month, or a total of $420.00 for the six months' period. This indicates that 23.3 per cent of the earnings from this station has been necessary to meet the salary of the agent at Salada for the period above mentioned.

It appears that the station of Salada was originally established shortly after the construction of the Ocean Shore Railway, predecessor in interest of the applicant, Ocean Shore Railroad Company, and that a station building costing some $3,775.00 was erected and placed on four town lots valued at $2,200.00, a total investment of about $5,975.00. This station was erected by the Ocean Shore Land Company, and together with the lots upon which it was located, was to become the property of the railroad under the terms of a certain agreement between the Ocean Shore Land Company and the Ocean Shore Railway Company, dated August 27, 1907, which agreement provided that the railway company should continuously maintain an agency station at this point. It was developed at the hearing that the deed to the station building and land upon which located had never passed to the railway company, it being alleged that the deed contained conditions to be imposed upon the railway company that were not contemplated or imposed in the agreement which was in effect prior to the preparation of the deed for execution. It appears that, notwithstanding the fact that the railway company had not taken title to the station building and ground upon which it was located, an agent had been maintained at Salada and had occupied the building as his office and agency.

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The applicant, Ocean Shore Railroad Company, presented a financial statement in support of its application which shows a very heavy loss for the six months' period ending June 30, 1915, and which is convincing that the efforts of the officials are properly being directed toward the conservation of every possible source of revenue and against the expenditure of any money that is not absolutely necessary in the proper operation and maintenance of the railroad. The amount necessary for the maintenance of an agent at Salada is not justified in comparison with the revenue received.

The protestants, while admitting that the revenue earned at this station was not large, were of the opinion that the withdrawal of an agent would seriously hamper their efforts to build up the section and would injure their standing as a live and growing community. The secretary of the Ocean Shore Land Company, as a witness for the protestants, testified that his company had an investment in Salada of approximately $130,000.00 to $140,000.00, covering their purchases of property for subdivision, street work, sewer construction, water system, etc. Their holdings originally consisted of some 94 acres, which were subdivided into town lots, and 60 acres which have not yet been laid out for subdivision. This land originally cost approximately $350.00 per acre.

This company has sold to date property to the value of $400,000.00, although some has been sold on a basis of deferred payments; it has unsold 60 acres not subdivided and from one-quarter to one-third of the town lots. There has been little movement or activity in the sale of property during the past year, although fair success has been in evidence in the collection of deferred payments on existing contracts.

There are two other real estate subdivisions which are served by the station of Salada, known as the Brighton Beach Land and Development Company and the Brighton Beach Amusement Company. These companies were not represented at the hearing.

It would appear that the interests in the territory surrounding and tributary to Salada are opposed to closing of the agency at this point, but as the showing does not justify the continuance of the agent heretofore maintained, such interests whose holdings would suffer by the discontinuance of the agency should together with the applicant agree on some arrangement whereby the expense of the agent's salary can be cared for, and thus all parties concerned can enjoy the benefits which they claim would be lost were the discontinuance of the agency permitted.

A suggestion was made at the hearing that an endeavor be made by all parties interested in the continuance of an agent at the applicant's station of Salada to arrive at an agreement whereby the amount of the agent's salary would be cared for by a proportionate amount being met

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by the applicant and the remainder by the other parties interested, but the Commission is advised that such arrangement could not be perfected.

I am of the opinion, therefore, that the application should be granted and suggest the following form of order:

ORDER.

The Ocean Shore Railroad Company having made application to this Commission for permission to discontinue the maintenance of an agent at its station of Salada, alleging that the amount of business transacted does not justify the maintenance of an agent and that the financial condition of the applicant is such that the utmost economy is necessary in the operation of its railroad, a public hearing having been held and the Commission being fully advised in the premises,

It is hereby ordered that the applicant, Ocean Shore Railroad Company, be permitted to discontinue the maintenance of an agent at its station of Salada. The Commission reserves the right, upon proper showing or upon its own initiative, to change or modify this order as it may deem right and proper, and as future developments may warrant.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of September, 1915.

DECISION NO. 2769.

IN THE MATTER OF THE APPLICATION OF THE OCEAN SHORE RAILROAD COMPANY FOR AUTHORITY TO ELIMINATE THE APPLICATION OF PACIFIC FREIGHT TARIFF BUREAU EXCEPTION SHEET NO. 1-D, C.R.C. NO. 90, OF F. W. GOMPH, AGENT, AND WESTERN CLASSIFICATION NO. 53, C.R.C. NO. 112, OF F. W. GOMPH, AGENT, FROM ITEMS NOS. 85, 86, 87, 88, AND 89 APPLYING ON FRESH VEGETABLES IN SECTION "C" OF OCEAN SHORE RAILROAD COMPANY'S LOCAL AND PROPORTIONAL FREIGHT TARIFF NO. 1, C.R.C. NO. 4.

Application No. 1861.

Decided September 20, 1915.

Applicant having filed its Local and Proportional Freight Tariff No. 1, C.R.C. No. 4, and omitted to except from such tariff the alternative application of Pacific Freight Tariff Bureau Exception Sheet provided a Class "C" rate on fresh vegetables, an exception which it has always heretofore made, operating only under the commodity rate affecting these items, now applies for permission to amend such tariff accordingly, and it appearing that such action is reasonable, application granted.

A. C. Green and *F. F. Thomas, Jr.*, for Applicant.

Chapman & Thompson, for Protestant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application of the Ocean Shore Railroad Company for an order granting authority to correct an inadvertent omission in its rules by which it failed to eliminate the application of Pacific Freight Tariff Bureau Exception Sheet No. 1-D, C.R.C. No. 90, F. W. Gomph, agent, and Western Classification No. 53, C.R.C. No. 112, of F. W. Gomph, agent, in connection with Items 85, 86, 87, 88 and 89 of its Local and Proportional Freight Tariff No. 1, C.R.C. No. 4, covering rates on fresh vegetables from points on its line to San Francisco, which error permits the application of Class "C" rates, same being lower than the commodity rates.

A careful examination of tariffs shows that effective January 30, 1912, the Ocean Shore Railroad canceled its exception sheet bearing C.R.C. No. 7, and became a party to Pacific Freight Tariff Bureau Exception Sheet No. 1-B, C.R.C. No. 52, which exception sheet provides on vegetables, fresh, in carloads, Class "C" rates.

Prior to January 30, 1912, the Ocean Shore Railroad filed with this Commission an independent exception sheet, C.R.C. No. 7, effective September 10, 1911. This exception sheet on page 22, Item 53, covering fruit and vegetables, contained the following:

NOTE.—The classification provided in this exception sheet and in Western Classification No. 50 (C.R.C. No. 48, of F. W. Gomph, agent) supplements thereto or reissues thereof, for vegetables will not apply on shipments of same to San Francisco. For specific rates see Local and Proportional Freight Tariff No. 1, C.R.C. No. 4.

And all previous issues made specific provision that would exclude the application of Class "C" rates to this commodity. The original tariff containing this provision was filed in the first instance by the Ocean Shore Railway Company in its Exception Sheet No. 1, C.R.C. No. 20, effective November 26, 1909.

Ocean Shore Railroad Company's Local and Proportional Freight Tariff No. 1, C.R.C. No. 4, effective April 6, 1912, contained the following specific commodity rates:

To San Francisco from	Rates in cents per ton of 2000 pounds
	Vegetables, viz.: Artichokes, in packages, prepaid or guaranteed, carload, minimum weight 20,000 pounds
Tunitas	$3 25
Sealrox	3 25
Purisima	3 10
Arleta	3 00
Halfmoon	3 00
South Granada	3 00
Moss Beach	3 00
Tobin	2 60
Brighton	2 20

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The alternative application of class rates was authorized for the first time in this tariff.

The same specific commodity rates, without the alternative application of class rates, have been continuously in effect since October 4, 1909, having been filed in the first instance by Ocean Shore Railway Company in Supplement No. 18 to its Local Freight Tariff No. S.F. 2, C.R.C. No. 1.

The general agent for applicant testified that it was because of an oversight at the time his company became a party to Pacific Freight Tariff Bureau Exception Sheet (January 30, 1912) that the item covering fresh vegetables was not properly considered and that item should have been "flagged" so as to prevent the application of Class "C" rates on shipment via his line to San Francisco. Further, that Class "C" rates were never intended to be established and were never applied to carloads of vegetables, all shipments, without exception, since this company commenced operation having been billed and collected on basis of the specific commodity rates and shippers have paid these rates without protest. The general agent's testimony was substantiated by the testimony of the local agent, the auditor and his chief clerk, all three witnesses having been employed in their present positions for a number of years.

As a further justification of the granting of the order prayed for, the following statement of the financial condition of the Ocean Shore Railroad Company was submitted:

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Year		Income	Expenditures	Net
1912	Operating	$272,162 67	$224,974 57	
	Other	2,198 27	†9,824 48	
			*20,779 38	
	Totals	$274,360 94	$255,578 43	
	Profit			$18,782 51
1913	Operating	$270,281 92	$261,019 76	
	Other	2,579 06	†13,029 82	
			*23,588 56	
	Totals	$272,860 98	$297,638 14	
	Loss			$24,777 16
1914	Operating	$284,733 29	$289,629 57	
	Other	3,982 51	†15,210 58	
			*22,835 94	
	Totals	$288,715 80	$327,676 09	
	Loss			$38,960 29
Six months, June 30, 1915	Operating	$100,960 51	$140,838 70	
	Other	889 33	†11,171 24	
			*15,418 90	
	Totals	$101,849 84	$167,428 84	
	Loss			$65,579 00
	Grand totals	$937,787 56	$1,048,321 50	
	Total loss			$110,533 94

†Taxes. *Deductions from gross corporate income.

In addition to the deficit shown above four assessments were levied during the same period, totalling $878,903.75, all of which have been spent in efforts to put the road on a paying basis.

Protest was entered by the San Francisco Artichoke Growers Association, its opposition being mainly based on the fact that the lawful rates on artichokes, in carloads, from points on the Ocean Shore Railroad Company to San Francisco, since January 30, 1912, have been Class "C" rates and not the specific commodity rates. This contention is correct but it is also a fact that the Class "C" rates became the lawful rates because of an error in tariff publication and not by any intentional change authorized by applicant. (See 32, I.C.C., 93.) Some comparisons of rates were submitted by protestant but same have little value in this case for the reason they were selected from tariffs of railroads operating under entirely different circumstances and conditions.

Under all the facts appearing of record, giving due consideration to the financial condition of the applicant, I am of the opinion that this application should be granted on the showing that the publication of

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Class "C" rates on shipments of fresh vegetables, carloads, from points on the Ocean Shore Railroad Company to San Francisco was made through error and inadvertence.

I submit the following form of order:

ORDER.

Application having been made by the Ocean Shore Railroad Company for authority to correct an inadvertent omission in the rules governing its Local and Proportional Freight Tariff No. 1, C.R.C. No. 4, and a hearing thereon having been held and it appearing that the application should be granted,

It is hereby ordered that the Ocean Shore Railroad Company be authorized to amend its Local and Proportional Freight Tariff.

No. 1, C.R.C. No. 4, by eliminating from the tariff the alternative application of Pacific Freight Tariff Bureau Exception Sheet 1-D, C.R.C. No. 90, of F. W. Gomph, agent, and Western Classification No. 53, C.R.C. No. 112, of F. W. Gomph, agent, to shipments of fresh vegetables.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of September, 1915.

DECISION No. 2770.

IN THE MATTER OF THE APPLICATION OF REEDLEY TELEPHONE COMPANY FOR PERMISSION TO ISSUE STOCK.

Application No. 1872.

Decided September 20, 1915.

Reedley Telephone Company applies for permission to issue sufficient shares of its capital stock of the par value of $1.00 per share to yield, if sold at 90, $4,780.00, of which amount it proposes to use $1,470.11 in the liquidation of accounts and notes due, the balance for additions and improvements to its system. Application granted.

A. Terkel, for Applicant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application by Reedley Telephone Company of Reedley, Fresno County, California, for permission to issue and sell sufficient

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shares of its capital stock at 90 cents per share to net the applicant $4,780.00 (5,311 1-9 shares), for purposes of making needed improvements and extensions and for refunding present obligations.

This company was organized in February, 1913, with a total authorized capitalization of $25,000.00, divided into 25,000 shares of common stock at the par value of $1.00 per share. The total stock at present issued and outstanding is 12,220 shares, for which full par value was received. Of this amount, 10,980 shares were issued and sold out of a total of 11,000 shares heretofore authorized by this Commission on March 11, 1913, and 1,240 shares were issued and sold out of a total of 2,500 shares heretofore authorized by this Commission on October 16, 1913. Of the amount originally authorized to be issued, all but 20 shares have been sold, but due to difficulties which were encountered in disposing of stock during the time within which the authorization to issue stock extended, the applicant was able to dispose of but 1,240 shares out of the total of 2,500 shares subsequently authorized.

Out of the proceeds obtained from the sale of the original issue of 10,980 shares, a portion was to have been used for the purpose of taking up a mortgage against the applicant's property held by The Pacific Telephone and Telegraph Company, but before it was taken up it became necessary to provide a new switchboard and after other obligations which it was also the purpose to meet out of these proceeds had been disposed of, there were not sufficient funds remaining with which to pay off the full amount of the balance remaining on the mortgage. There is now a balance of $380.00 outstanding against this account.

The purpose for which the proceeds of the latter authorized issue of 2,500 shares was to be used was for making improvements and extensions to plant, but as only a portion of the stock was issued this work was not completed. The applicant states that it is now necessary to make further improvements and extensions in addition to those originally planned and left uncompleted, all of which are essential to properly take care of present and future demands for telephone service.

For the eight months of the year ending December 31, 1913, during which the applicant had been operating this system, no dividends were paid the stockholders, the profits for these months having been reinvested in plant. During the year 1914, a surplus of $900.00 had also been put back into new plant, and a dividend having been declared for this amount, the applicant borrowed $900.00 from local banks with which it paid this dividend.

There is also a balance of $190.11 due the Kellogg Switchboard and Supply Company for equipment which it has furnished.

The applicant believes that stock can now be sold and, therefore, desires permission to issue sufficient stock at 90 cents per share to net

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the company $4,780.00 (5,311⅑ shares) for the purpose of completing these improvements and extensions and to meet these obligations as follows:

Balance due The Pacific Telephone and Telegraph Company on its mortgage	$380 00
Kellogg Switchboard and Supply Company for equipment	190 11
First National Bank of Reedley, note for	450 00
Reedley National Bank, note for	450 00
To complete improvements and extensions previously planned	1,280 00
For further improvements and extensions	2,029 89
Total	$4,780 00

I have previously shown that the total stock at present outstanding is 12,220 shares. The portion of the additional issue for which permission is now desired, which represents plant already installed, viz, $1,470.11, and representing approximately 1,633 shares, would bring the total issue up to 13,853 shares. The applicant has not presented an appraisal of its property to the Commission, but this total number of shares at par would represent an investment per exchange station of slightly more than $60.00 for the total number of owned stations at present in service. For present purposes, this investment per station does not appear excessive, and for the present it does not seem necessary to require an inventory and plant appraisal.

This company has issued no bonds and aside from the items above enumerated it is free from indebtedness. It appears that the improvements and extensions which the applicant desires to make will subserve the public convenience and necessity, and since the expenditures which are now desired are for proper capital purposes, I am willing to recommend that the application be granted, provided that, as the applicant has not fully specified the items of construction involved for which it is desired to expend the sum of $3,309.89 included in the last two items above, before any stock may be issued for this purpose detailed statements satisfactory to the Commission shall be submitted to it for approval by the Commission.

The following order is submitted:

ORDER.

Application having been made by Reedley Telephone Company, a public utility corporation, of Reedley, Fresno County, California, for permission to issue and sell a sufficient number of shares of its capital stock at 90 cents per share to net said applicant $4,780.00 for purposes of making improvements and extensions to its telephone system and for refunding present obligations; and a hearing having been held and it appearing to the Commission that the purposes for which the Reedley

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Telephone Company desires to issue its stock are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Reedley Telephone Company be and it is hereby granted authority to issue a sufficient number of shares of its capital stock at 90 cents per share to net the said Reedley Telephone Company $4,780.00, upon the following conditions and not otherwise, to wit:

1. The stock herein authorized to be issued shall be issued so as to net Reedley Telephone Company not less than 90 cents per share.

2. The proceeds of the stock herein authorized to be issued shall be used for the purposes of making improvements and extensions to the applicant's telephone system and for refunding its present obligations, as follows:

(*a*) Balance due The Pacific Telephone and Telegraph Company on its mortgage	$380 00
(*b*) Kellogg Switchboard and Supply Company for equipment	190 11
(*c*) First National Bank of Reedley, note for	450 00
(*d*) Reedley National Bank, note for	450 00
(*e*) To complete improvements and extensions previously planned	1,280 00
(*f*) For further improvements and extensions	2,029 89
Total	$4,780 00

3. Reedley Telephone Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds derived from the sale of the stock herein authorized to be issued and on or before the twenty-fifth day of each month shall make a verified report to the Commission showing the sale or disposal of the stock herein authorized to be issued, the terms and conditions of such sale, and the disposition of the proceeds derived therefrom, all in accordance with this Commission's General Order No. 24 which, in so far as applicable, is made a part of this order.

4. This order shall apply only to stock issued on or before June 30, 1916.

5. Before any stock may be issued for purposes of making improvements and extensions to the applicant's telephone system, statements in detail satisfactory to the Commission showing the items of construction and the costs thereof which it is proposed to perform, shall be submitted to the Commission for its approval. The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of September, 1915.

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DECISION NO. 2771.

REEDLEY TELEPHONE COMPANY

vs.

JOHN W. BURKE, J. E. ANDERSON, C. E. SCHROEDER, ANTONE HANSEN AND J. W. GALLE.

Case No. 836.

Decided September 20, 1915.

Complainant, operating a telephone system in the town of Reedley, alleges that defendants, operating a famer line, have connected a resident residing within the city limits who should be under exchange rates, and the matter being satisfactorily adjusted at the hearing, complaint dismissed.

A. Terkel, for Reedley Telephone Company.

E. A. M. Webb, for J. E. Anderson.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Reedley Telephone Company, the complainant in this case, operates a telephone exchange in the city of Reedley, Fresno County, from which it supplies its patrons within the city and certain surrounding territory. Its schedule of rates on file with the Railroad Commission provides certain rates for so-called exchange service for patrons located within the city limits, and suburban and farmer line rates for patrons located outside of the city limits. The defendants in the case are joint owners of a farmer line which they or their predecessors constructed a number of years ago from their respective premises outside the city limits, and which is connected with the complainant's exchange. One of the defendants, J. E. Anderson, owns property which is located within the city limits on which a telephone connected to this farmer line was formerly located. During a number of changes in tenancy of this property, this telephone has been out of service and the present tenant, John W. Burke, desiring telephone service was denied farmer line service over this line by the complainant due to the premises being located within the city limits where exchange rates are applicable.

The complainant now alleges that, regardless of the refusal to allow farmer line service and notwithstanding complainant's willingness to install exchange service at the rate provided by the schedule, the defendant, J. E. Anderson, has refused to allow the latter, and that a telephone has been connected with this farmer line at this location. Complainant, therefore, prays that unless this telephone be removed it

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be permitted by the Commission to disconnect the entire line from its switchboard.

At the hearing in this complaint, it was agreed between the interested parties that the remaining owners of the line should purchase Mr. Anderson's interest in the line and that the Reedley Telephone Company should purchase the telephone, that the line and telephone should be removed from the premises, and that the Reedley Telephone Company should be permitted to install its own line and telephone. Mr. Anderson's interest has accordingly been bought and paid for, and the complainant now formally requests dismissal of the complaint.

The following order is submitted:

ORDER.

The matters involved in the above entitled proceeding having been adjusted satisfactorily to the complainant and the defendants, and the complainant having thereupon asked that the proceeding be dismissed, and the Commission being fully apprised in the matter,

It is hereby ordered that the complaint herein be, and it is hereby, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California,, this 20th day of September, 1915.

DECISION No. 2772.

IN THE MATTER OF THE APPLICATION OF SNOW MOUNTAIN WATER AND POWER COMPANY FOR PERMISSION TO CHARGE MORE THAN THE RATES SPECIFIED IN SCHEDULES FILED WITH SAID RAILROAD COMMISSION.

Application No. 98.

Decided September 20, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

It appearing from the record in this proceeding that this application was disposed of by informal order dated July 10, 1912,

It is hereby ordered that the same be and it is hereby dismissed.

Dated at San Francisco, California, this 20th day of September, 1915.

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DECISION No. 2773.

IN THE MATTER OF THE APPLICATION OF PALERMO LAND AND WATER COMPANY FOR PERMISSION TO MAKE INCREASES IN CHARGES FOR WATER SUPPLIED FOR DOMESTIC PURPOSES, IRRIGATION AND OTHER USES IN AND IN THE VICINITY OF THE TOWN OF PALERMO, BUTTE COUNTY, CALIFORNIA.

Application No. 337.

Decided September 23, 1915.

Applicant heretofore applied for permission to increase its rates for water for irrigation service and after an investigation a rate of 15 cents per miner's inch per day was established. Applicant subsequently applies for a rehearing upon its application, contending that recent developments have so changed conditions that it is entitled to further increases, and after submission of the additional evidence which it has to offer, a rate of 22 cents per miner's inch per day is established, to become effective October 15, 1915. In all other particulars the original decision to remain in full force and effect.

McCutchen, Olney & Willard and *J. M. Mannon,* for Applicant.

A. H. Davis, and *A. E. Richardson,* for Consumers.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

OPINION ON REHEARING.

The application of the Palermo Land and Water Company was filed herein December 3, 1912, and hearings were conducted at various times between that date and September 29, 1913, and on December 31, 1913, Decision No. 1188 was rendered in the matter.

The existing rate for irrigation service at the time the application was filed was 12½ cents per miner's inch per day, being one-fiftieth of a cubic foot per second. The rate applied for by the company was 25 cents per miner's inch per day, and by its order the Commission established the rate of 15 cents per miner's inch per day, with a corresponding 20 per cent increase in the rate for water furnished dredgers. The dredger rate was and remains a uniform monthly flat charge. Domestic rates under such order remained unchanged.

Applicant thereafter applied to this Commission for rehearing in said matter. The application for rehearing was set down for hearing, and at the hearing thereof applicant was advised that it would be permitted to introduce additional evidence, including evidence of any change in conditions which have occurred since the rendition of the said decision herein.

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and the order made thereon might comprehend a ruling on the application for rehearing and such order as to rates as the entire record would warrant.

At the hearing of the application for rehearing, the record in Case No. 627, entitled *Security Investment Company* vs. *Palermo Land and Water Company* was admitted in evidence, and oral evidence as to discontinuance of dredging service was also introduced.

I have, therefore, recommended the order hereinafter set forth, which in effect grants the petition for rehearing and also allows a rate in advance of that allowed in the original order.

Commissioner Eshleman, before whom the original hearing was held in this matter, in his opinion preceding the order in said Decision No. 1188 repeatedly called attention to the indefinite data upon which to base a determination of the charges that go to make up the proper returns to be received by applicant. He also expressed his opinion that the order then made by the Commission should remain in effect only for a short period owing to the expectation that the dredgers consuming a part of applicant's water supply were soon to cease operations.

The rehearing in this matter, for reasons previously stated, has partaken in a measure and to an extent of the nature of an action of a later date than December 31, 1913, and the additional evidence hereinbefore referred to as having been introduced has been considered herein.

In this decision consideration has been given to—

(1) The extent of demand that the company can reasonably supply;

(2) The amount to be allowed as interest upon investment;

(3) The reasonable expenses of operation;

(4) The decrease of revenue on account of cessation of dredging operations.

The first of these considerations was passed upon in Case No. 627, and the other factors will be briefly referred to hereafter.

The following tabulation shows the company's statement of income and expense for a six-year period:

Income (Detail 1912-13-14 Approximate).

	1909	1910	1911	1912	1913	1914
Sale for—						
Irrigation	$10,836	$11,311	$10,683	$8,405	$10,152	$11,372
Dredgers	19,792	16,713	12,750	14,100	11,050	7,200
Domestic, etc.	1,961	2,069	895	850	850	794
Totals	$32,589	$30,093	$24,328	$23,355	$22,052	$19,366

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Operating Expenses.

	1909	1910	1911	1912	1913	1914
Direct	$10,635	$10,910	$9,503	$12,298	$10,066	$10,246
General	2,301	1,977	4,427	3,023	5,765	5,846
Taxes	820	815	825	423	500	500
Totals	$13,756	$13,702	$14,755	$15,744	$16,331	$16,592
Depreciation	5,000	5,000	5,000	5,000	5,000	5,000
Totals	$18,756	$18,702	$19,755	$20,744	$21,331	$21,592
Net result	$13,833	$11,391	$4,573	$2,611	$721	$2,226

The above table is based upon applicant's annual reports now on file and the reports of their accounts by A. L. Adams in applicant's Exhibit No. 1. In "Maintenance and Operation" expenses all actual expenditure for renewal or replacement of structures is included.

This property has now reached such an age that reasonably the expenditures covering a period of six years include the average expenses of replacement or renewal of structures.

In analyzing the detailed accounts for 1911 and 1912, the Commission's engineers deducted the expenses incurred that obviously should be met out of the depreciation fund.

Accepting the company's "direct" expenses and the relevant part of "general" expenses will increase apparent net returns in the tabulation above by all or part of $5,000.00, which is estimated by the company for depreciation.

The duty of water apparently proven early in these proceedings was 1.75 feet in depth each season, the equivalent of 44 miner's inches for one day per acre. Testimony in Case No. 627, made available in this proceeding, apparently established a duty of 1.4 feet in depth or 35 miner's inches for one day.

The decision in that case recites that the area irrigated late in 1914 was 2,356 acres and that between 750 and 1,000 acres additional can be irrigated. For the purpose of this decision it will be assumed that the minimum service capacity of the system is 3,230 acres.

If the duty of water is that accepted at the time of hearing Application No. 337, a year's demand is to be anticipated amounting to 3,230 x 44 or 142,120 miner's-inch days, and if at the later determined duty (see Case No. 627) 3,230 x 35 or 113,050 miner's-inch days.

Commissioner Eshleman left the extent to which irrigation service could be increased indefinite, but expressed belief that the company, if it chose, could serve a greater area.

Commissioner Thelen later justified this belief and therefore it is fair to consider it established that *some* increase of returns was possible in 1912 and since that time. The acreage determined upon by Mr. Thelen

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was the least possible with the dredgers out of operation and the water used before that time for dredgers admittedly brought greater unit returns.

Minimum returns from irrigation at the indicated rates per miner's inch day are:

	12½ cents	15 cents	22 cents	25 cents
142,120	$17,765	$21,318	$31,266	$35,530
113,050	14,131	16,957	24,871	28,262

Returns from domestic use will apparently approximate $850.00 annually.

On the basis of the duty contended for by applicant in the earlier proceedings, the possible acreage now determined and the rate established by the Commission the applicant should at all times have received at least $22,000.00 annually, and as much in excess of that amount as the rate for the dredgers' use exceeds 15 cents per miner's inch per day for that water during the irrigation season.

At the time of the hearing of Case No. 627, three dredgers were in operation, using each, by measure of the applicant's engineer, 36½ miner's inches. This amount of water in a run of 150 days at 15 cents per miner's inch-day would bring the company $825.00, whereas dredger sales amounted to nearly the amount shown in the table, $7,200.00, a difference of $6,375.00.

If the company could have obtained an annual return of $16,957.00 from irrigation sales alone, from irrigation and dredgers, in 1914 at present rate it could have realized $23,332.00 and, adding $850.00 probable domestic income, there was a reasonable expectation of $24,182.00 annual receipts.

It appears that the dredger use has, since the filing of the application for rehearing herein, practically ceased and little if any return will be hereafter had from that source.

In Decision No. 1188, Commissioner Eshleman did not establish a value of the property, but did clearly state that, in his opinion, the property did not have the value contended for by applicant.

The history of the concern is recited in that decision and undoubtedly the property as it chances to exist is not a measure of its service value and a measure of reasonable net return should not in this case be based primarily upon an estimate of duplication cost.

From all the evidence in the case, I find that the sum of $160,000.00 is the value of applicant's property for the purpose of fixing rates. Interest on this amount at 7 per cent per annum is $11,200.00.

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Operating expenses, including depreciation, judging from the company's accounts and testimony introduced upon that point should not exceed,

Direct, including depreciation	$10,610 00
Taxes	500 00
General	3,000 00
Total	$14,110 00

Combining, the total returns become $25,310.00.

After considering all the evidence, including evidence of the fact that dredger service has been practically discontinued since the filing of the application for rehearing herein, I find as a fact that the rate of 22 cents per miner's inch per day (a miner's inch being one-fiftieth of a cubic foot per second) for irrigation water is now a just, fair, and reasonable rate.

I recommend that the rate for irrigation water of applicant be 22 cents per miner's inch per day, and that said rate be made effective from the 15th day of October, 1915.

I submit the following form of order:

ORDER.

Palermo Land and Water Company having petitioned for a rehearing on order of this Commission dated December 31, 1913, in the above entitled matter; and said petition coming on regularly for hearing, and evidence having been introduced thereat; and it having been stipulated that the evidence and records introduced at the original hearing of said matter could be supplemented by oral and documentary evidence introduced at said hearing on petition for rehearing, and said original record was so supplemented by oral and documentary evidence; and it further having been stipulated that the order made on said petition for rehearing might comprehend a ruling on the application for rehearing and such order as to rates as the entire record would warrant; and the matter having been argued and submitted,

The Commission finds as a fact that the rate of 22 cents per miner's inch per day (a miner's inch being one-fiftieth of a cubic foot per second) for irrigation water is now a just, fair, and reasonable rate.

And basing its order upon these findings of fact and upon all other findings of fact in the original decision, and the findings of fact in the foregoing opinion which are also adopted as findings of fact by this Commission,

It is hereby ordered by the Railroad Commission of the State of California that 22 cents per miner's inch per day (a miner's inch being one-fiftieth of a cubic foot per second) for irrigation water be established as

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a rate for service of water by applicant, Palermo Land and Water Company, said rate to become effective on the 15th day of October, 1915.

It is further ordered by the Railroad Commission of the State of California, that the petition for rehearing herein be denied, and, except as modified by this order, that the original decision herein stand.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1915.

Decision No. 2774.

SIMON LEVI COMPANY, DOYLE BARNES COMPANY, JULIAN PRODUCE COMPANY, NASON & COMPANY, AND WOLF & SONS

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 830.

Decided September 23, 1915.

Complainants, produce merchants engaged in business in the city of San Diego, allege that defendant company operates under a rule whereby it accepts shipments of produce at San Francisco Bay points destined to Los Angeles and, either before or for a limited time after arrival of such shipments at Los Angeles, permits their reconsignment to San Diego at the regular through rate from point of origin to San Diego, the latter named city having a lower rate than Los Angeles on account of water competition. They allege that such practice demoralizes the San Diego market by dumping considerable quantities of unexpected produce there, and petition the Commission to eliminate such rule from defendant's tariffs.

Held, That the reconsignment rule, effective on lines of defendant and on practically all railroads, is of considerable benefit to shippers and the public in general; that complainants have shown no good reason why such rule should be abolished; complaint dismissed.

I. L. Leszynsky, for Complainants.

A. M. Reinhardt, for Defendant.

Report of the Commission.

Loveland, *Commissioner.*

The complainants in this proceeding are firms and corporations engaged at San Francisco and San Diego in the produce and commission business. They are shippers of potataoes and onions in carload lots from points located on The Atchison, Topeka and Santa Fe

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Railway between Stockton and San Francisco to San Diego, the rate on which is $3.50 per ton of 2,000 pounds. The rate from same points to Los Angeles is $5.00 per ton, rate to San Diego being lower than Los Angeles on account of water competition.

Complainants allege that they are being discriminated against and that their business is suffering serious injury by reason of the existing rule of defendant whereby it is permissible to ship carloads of potatoes and onions from points named above to Los Angeles with the privilege of reconsigning or diverting the shipments to San Diego. Such cars as are reconsigned or diverted are given benefit of the through rate of $3.50 per ton, the same as if cars had moved direct from point of origin to San Diego, provided diversion is made within 96 hours after arrival at Los Angeles.

Complainants contend as a result of this arrangement that the San Diego market is being continually demoralized, their business disrupted and the city of San Diego made the dumping ground for a poor grade of produce. They ask that this Commission order defendant to correct tariff provisions so that the rate of $3.50 per ton will apply only to such shipments as are routed to San Diego via direct line through Corona, or only to such shipments as may be reconsigned or diverted to San Diego prior to arrival of car at billed destination, also that either combination of local rates over Los Angeles or a specific rate of $5.00 per ton be published to apply on all shipments billed to Los Angeles and reconsigned or diverted after arrival at that point.

The rules and regulations relating to reconsignment and change of destination published by The Atchison, Topeka and Santa Fe Railway Company in Item 765, Tariff No. 8117–E, C. R. C. 305, read in part as follows:

> "For each diversion or reconsignment (change in destination including change in consignee if desired), filed with carrier's agent before car arrives at first destination, or within 96 hours (exclusive of Sundays and holidays) after 7.00 a. m. of day following arrival of car at first destination, a charge of $2.00 per car will be made and through rate from point of origin to final destination will apply; but if instructions to change destination are not filed within the time specified herein, freight charge will be based on rate from originating point to first destination, plus rate from such point to final destination, in which case no charge for diversion will be made, except as provided in paragraphs (C) and (D)."

This arrangement has been in effect for a great many years on the coast lines of The Atchison, Topeka and Santa Fe Railway Company and is practically the same as the reconsignment privileges granted by all carriers in this State and, in fact, throughout the United States.

Defendant in justification of the reconsignment or diversion privilege testifies that said diversion rule is not applicable solely to the com-

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modities mentioned in this proceeding, but is a rule of general applicability, and that the privilege shippers now enjoy of diverting carloads of potatoes and onions originating at San Francisco Bay points from Los Angeles to San Diego and applying thereto the through rate of $3.50 per ton results in a distinct benefit to the city of San Diego and to the people thereof, enabling them to obtain these commodities at a lower freight rate than would prevail if the combination of locals over Los Angeles was charged or if a specific rate of $5.00 per ton was published to cover.

The Interstate Commerce Commission in *Detroit Traffic Association* vs. *Lake Shore and Michigan Southern Railway Company et al.*, 21 I. C. C. 258–259, said:

> "Reconsignment, as technically understood, is a privilege extended by carriers to shippers under which goods may be forwarded to a point other than their original destination, without removal from the car and at the through rate from the initial point to that of final delivery. This application to the shipment of the through rate—which is often less than the sum of the intermediate rates in and out of the point of original destination—is the distinctive feature of reconsignment, and separates it from reshipment, which is otherwise quite similar.
>
> The primary economic advantage of reconsignment is found in the increase in the fluidity and regularity of the movement of commodities; there is an important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, celerity of movement is increased, the direction of commodities to the point of most active demand is facilitated. In other words, reconsignment increases the efficiency of transportation facilities in performing their most important function of bringing together supply and demand. The shipper of perishable products is enabled to divert his shipment from a market already overstocked, thus often converting a prospective loss into a gain; he is enabled to take advantage of his latest possible information as to market conditions. Similar advantages are seen in the movement of lumber and grain and other commodities of universal necessity."

Again in 27 I. C. C. 115–116, *Central Commercial Company* vs. ***Louisville and Nashville Railroad Company:***

> "Diversion and reconsignment are required in the conduct of modern business and are to be regarded as commercial necessities. Many of the railroads of the country permit the practices and thousands of carloads of coal, lumber, fruit, and vegetables, and other commodities are reconsigned and diverted annually upon the payment of the through rate, point of origin to destination, with or without a charge per car for the service rendered in making the diversion in the movement.
>
> We hold that where the contents of the car remain unchanged, where the change of destination or route does not involve an out-of-line haul, and request is made in reasonable time, reconsignment

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and diversion on the basis of the through rate from point of origin to new destination, with a fair charge for the extra services performed, are reasonable practices, that the denial thereof is unreasonable and unlawful, and that this Commission has power, in its discretion, to require their establishment."

Testimony of complainants was entirely illustrative of the effect produced in the San Diego market by the unexpected arrival of carloads of potatoes and onions diverted to that point from Los Angeles. However, it is not the function of railroads or of this Commission to so adjust tariffs that business may be conducted at certain localities along particular lines. No evidence was introduced to prove the present reconsignment regulations and charges to be either unjust or unreasonable.

I am of the opinion and find that complainants have not justified the proposed changes in the rules, regulations or rates governing the reconsignment or diversion of shipments of potatoes and onions from Los Angeles to San Diego.

I submit the following form of order:

ORDER.

Simon Levi Company, et al., having filed its complaint against The Atchison, Topeka and Santa Fe Railway Company praying for changes in certain rules governing reconsignment and diversion referred to in the opinion hereto, a hearing having been held, and the Commission being fully appraised in the premises,

It is hereby ordered that the complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1915.

DECISION No. 2775.

IN THE MATTER OF THE APPLICATION OF THE SOUTHERN SIERRAS POWER COMPANY FOR AN ORDER AUTHORIZING IT TO EXECUTE A FIRST AND REFUNDING MORTGAGE AND FOR AN ORDER AUTHORIZING THE ISSUE AND SALE OF FIRST AND REFUNDING MORTGAGE BONDS.

Application No. 1436.

Decided September 23, 1915.

The Commission has heretofore authorized applicant herein to issue certain first mortgage bonds of which to date it has issued $150,000.00 face value. It has

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also authorized the issue by applicant of certain first and refunding mortgage bonds for proper capital purposes. Applicant now applies for permission to issue, in lieu of the first mortgage bonds remaining unissued, $150,000.00 first and refunding bonds to be sold at not less than 90, proceeds to be used to pay off indebtedness to Nevada-California Power Company and Sierras Construction Company, also for permission to use the proceeds of $798,000.00 face value of its first and refunding bonds heretofore authorized for the purpose of reimbursing its treasury in the sum of $9,326.70 and the balance to pay off indebtedness to the Nevada-California Power Company in the sum of $708,196.40, and to execute an amended first and refunding mortgage providing for the guarantee of such bonds by the Nevada-California Power Company. Application granted.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

By a supplemental order dated March 19, 1915 (Decision No. 2244), this Commission authorized The Southern Sierras Power Company to issue $300,000.00 face value of first mortgage bonds and to use the proceeds derived from the sale of these bonds for the following purposes:

(*a*) For the retirement of the outstanding notes of The Southern Sierras Power Company	$35,364 85
(*b*) For the payment of accounts payable	14,638 75
(*c*) For partial payment of indebtedness due to The Nevada-California Power Company, which was listed by the applicant in the total amount of	995,584 01

By a supplemental order dated August 4, 1915 (Decision No. 2665), this Commission authorized The Southern Sierras Power Company to pledge $75,000.00 face value of first mortgage bonds heretofore authorized to secure the payment of notes in a like amount.

By an order dated July 13, 1915 (Decision No. 2592), this Commission authorized The Southern Sierras Power Company to issue $3,668,000.00 face value of its first and refunding Series "A" 6 per cent 50-year bonds. The Commission's order provided that the first and refunding mortgage bonds should be used for the following purposes:

(*a*) To pay, retire or discharge $2,500,000.00 of first mortgage 25-year bonds of The Southern Sierras Power Company	$2,500,000 00
(*b*) To pay, retire or discharge $300,000.00 face value of first mortgage 25-year bonds authorized by Decision No. 2244	300,000 00
(*c*) To pay, retire or discharge $70,000.00 face value of bonds of Lytle Creek Power Company	70,000 00
(*d*) To pay and discharge outstanding indebtedness	798,000 00

In this supplemental application now before this Commission, applicant reports that it has realized $138,675.00 from the sale of $150,000.00 face value of first mortgage bonds, and that it has used the proceeds thus obtained to pay notes and accounts in the sum of $40,000.00 and to pay outstanding indebtedness in the amount of $98,675.00 due The Nevada-California Power Company.

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Applicant now requests authority to issue at not less than 90 per cent of face value plus accrued interest, $150,000.00 face value of first and refunding mortgage bonds in lieu of $150,000.00 face value of first mortgage bonds heretofore authorized by this Commission.

The proceeds to be obtained from the sale of the $150,000.00 first and refunding mortgage bonds, applicant desires to use to pay and discharge indebtedness due The Nevada-California Power Company and The Sierras Construction Company.

Applicant also asks for authority to expend the proceeds to be obtained from the sale of the $798,000.00 face value of first and refunding bonds heretofore authorized for the following purposes:

(*a*) To reimburse the treasury of the company for payments made out of the treasury for balance of notes and interest and accounts payable on Application No. 1391	$10,003 60
(*b*) The balance to be applied on account of applicant's indebtedness to The Nevada-California Power Company, which balance, if the bonds are sold so as to net 90 per cent of par, will amount to	708,196 40
Total	$718,200 00

Included in the item of $10,003.60 is the sum of $676.91, representing interest; and the adjustment of this figure, therefore, will leave $9,326.70.

Applicant also asks this Commission to approve the revised copy of its first and refunding mortgage. The revised copy differs from the first and refunding mortgage heretofore approved subject to certain changes in that it contains a provision whereby The Nevada-California Power Company guarantees the payment, both as to principal and interest, of the first and refunding mortgage bonds of The Southern Sierras Power Company. The guarantee appears on the bonds and reads as follows:

> "For value received, The Nevada-California Power Company hereby waives presentation, demand, protest and notice of protest on the within bond and guarantees due payment of the principal and interest on this bond at the time and in the manner therein specified, and agrees that no release, extension or accommodation to The Southern Sierras Power Company shall operate as a release or waiver of its liability as guarantor."

The mortgage or deed of trust is dated January 1, 1915. It is executed by and between the applicant and The International Trust Company of Denver and Los Angeles Trust and Savings Bank, trustees. The mortgage which applicant desires to substitute for the one heretofore approved is of the so-called "open end" type, in that it does not specify the amount of bonds which may be issued thereunder. It provides that bonds may be issued in amounts equal to 85 per cent of the

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appraised value of the property, provided the consent of the Railroad Commission of the State of California is first obtained.

The mortgage recites that the present depreciated value of the property of The Southern Sierras Power Company, as of December 31, 1914, amounted to $5,050,250.00. It should be noted in this connection that this Commission based its decision in the above entitled matter on the cost of the property which was reported at $4,314,979.42. Eighty-five per cent of the cost as reported amounts to $3,667,732.51.

The bonds are to be issued in series. The first series is to be known as first and refunding mortgage 6 per cent gold bonds, Series "A." The amount of bonds to be issued under Series "A" is limited to $5,000,000.00. The initial issue of bonds of Series "A" shall bear interest at the rate of 6 per cent per annum. All bonds thereafter issued, either of Series "A" or any subsequent series, shall bear interest at such rate or rates, not exceeding 6 per cent per annum, as may be fixed and determined by the board of directors of The Southern Sierras Power Company and designated in said bonds when issued. Series "A" bonds are dated January 1, 1915, and mature January 1, 1965.

The coupon bonds shall be of such denomination as the board of directors may determine. The registered bonds shall be issued in denominations of $1,000.00, $5,000.00, $10,000.00 or such multiples thereof as the board of directors may determine.

The indenture appropriates the bonds authorized to be issued as follows:

$2,500,000 00	to retire, refund or pay first mortgage bonds of The Southern Sierras Power Company.
300,000 00	to retire, refund or pay first mortgage bonds of The Southern Sierras Power Company, the issuance of which has been authorized by Decision No. 2175 and Decision No. 2144 of the Railroad Commission of the State of California.
70,000 00	to retire, refund or pay first mortgage bonds of Lytle Creek Power Company.
798,000 00	to retire, refund or pay floating indebtedness.
$2,668,000 00	total.

Subject to the approval of the Railroad Commission of the State of California, the indenture authorizes the Southern Sierras Power Company from time to time to issue additional bonds. Bonds may be issued for some or all of the following purposes:

(1) To acquire property necessary or desirable for the business of the power company.

(2) For the construction, completion, extension or improvement of its facilities.

(3) For the improvement or betterment of its service.

(4) For the discharge or lawful refunding of the outstanding obligations of the power company.

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(5) For the purpose of reimbursing the power company for moneys expended out of income for capital purposes.

(6) For such other and further lawful purposes as may be approved and allowed by the public utility commission or commissions having jurisdiction in the matter.

The mortgage also obligates the company to pay, beginning February 1, 1920, and annually thereafter, from its net earnings for the purpose of creating a redemption fund, an amount equal to three-fourths of 1 per cent of the face value of the bonds outstanding. The bonds are callable at 103.

The holders of a majority of the bonds outstanding have the power to control foreclosure proceedings.

I herewith submit the following form of order:

FIRST SUPPLEMENTAL ORDER.

The Southern Sierras Power Company having applied to this Commission for authority to issue $150,000.00 face value of its first and refunding mortgage bonds in lieu of $150,000.00 of its first mortgage bonds heretofore authorized to be issued by this Commission; for authority to expend the proceeds from the sale of $798,000.00 face value of its first and refunding mortgage bonds heretofore authorized by this Commission in the manner specified in the foregoing opinion; and for authority to execute a first and refunding mortgage in the form of a copy of said mortgage attached to this supplemental application and marked "Revised Exhibit B."

And it appearing that the purposes for which it is proposed to issue said $150,000.00 of first and refunding mortgage bonds and said $798,000.00 face value of first and refunding mortgage bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

And it appearing to this Commission that the application as herein made is reasonable and should be granted,

It is hereby ordered that The Southern Sierras Power Company be granted authority and it is hereby granted authority to issue $150,000.00 face value of its first and refunding mortgage bonds in lieu of $150,000.00 face value of first mortgage bonds heretofore authorized by this Commission (Decision No. 2244), said bonds to be sold so as to net applicant not less than 90 per cent of the face value thereof plus accrued interest thereon, and the proceeds to be used to pay indebtedness due The Nevada-California Power Company and The Sierras Construction Company.

It is further ordered that The Southern Sierras Power Company be granted authority and it is hereby granted authority to expend the pro-

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ceeds to be obtained from the sale of $798,000.00 face value of its first and refunding bonds for the following purposes:

(*a*) To reimburse the treasury of the company for payments made on notes and accounts payable included in Application No. 1391	$9,326 70
(*b*) For payment on account of applicant's indebtedness to The Nevada-California Power Company	708,196 40

It is further ordered that The Southern Sierras Power Company be granted authority and it is hereby granted authority to execute a first and refunding mortgage substantially in the form of a copy of said mortgage filed in connection with the application herein and marked "Revised Exhibit B," entitled "First and Refunding Mortgage, The Southern Sierras Power Company to Los Angeles Trust and Savings Bank and The International Trust Company, Trustees, dated January 1, 1915, Securing the First and Refunding 6 Per Cent Gold Bonds of Said Power Company."

The approval herein given of said mortgage is for the purpose of this proceeding only and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

The approval herein given of said mortgage is given upon the condition that said approval shall not constitute an approval of any of the statements of value of the properties of this applicant as contained in said mortgage.

It is further ordered that this Commission's order dated February 27, 1915 (Decision No. 2175), and the supplemental orders thereto, and this Commission's order dated July 13, 1915 (Decision No. 2592), shall remain in full force and effect, except as the same may be modified and amended by this supplemental order.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1915.

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Decision No. 2776.

IN THE MATTER OF THE APPLICATION OF THE PEOPLE OF THE STATE OF CALIFORNIA ON RELATION OF THE DEPARTMENT OF ENGINEERING FOR AN ORDER AUTHORIZING THE CONSTRUCTION OF A STATE HIGHWAY BRIDGE OVER THE TRACKS OF THE SOUTHERN PACIFIC COMPANY AND THE CENTRAL PACIFIC RAILWAY COMPANY NEAR THE NORTH CITY LIMITS OF DUNSMUIR, SISKIYOU COUNTY, CALIFORNIA.

Application No. 1865.

Decided September 23, 1915.

Report of the Commission.

ORDER OF DISMISSAL.

Applicant in the above entitled matter having requested permission to withdraw the same,

It is hereby ordered that this application be and it is hereby dismissed.

Dated at San Francisco, California, this 23d day of September, 1915.

Decision No. 2777.

POSTAL TELEGRAPH CABLE COMPANY

vs.

WESTERN UNION TELEGRAPH COMPANY.

Case No. 710.

Decided September 23, 1915.

Complainant, a competitor of defendant company in the telegraph business, alleges that defendant company pays a commission to hotel and storekeepers for messages collected by them and sent over its lines, but that it does not pay complainant a commission for messages collected by complainant and delivered to defendant, and accordingly petitions the Commission to either compel defendant to discontinue the payment of commissions or to compel a like payment to complainant.

Held, That the commission on messages collected paid by defendant to hotelkeepers and storekeepers is in the nature of payment for services as agent and not a rebate from its regular schedule, as on all personal messages of such agents no rebate whatever is paid, also that this Commission can not compel a company to pay commissions to its competitor who has a like opportunity of establishing agents or stations throughout what it might deem a profitable field. Complaint accordingly dismissed.

Willard P. Smith and *B. B. Blake*, for Complainant.

Beverly L. Hodgehead, for Defendant.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

Postal Telegraph Cable Company complains of Western Union Telegraph Company on the ground that the latter makes unlawful payments to certain persons who receive telegrams and deliver them to it. Also that defendant discriminates by refusing to pay Postal Telegraph Cable Company for receiving messages for it.

The facts shown by the evidence are that certain hotelkeepers and storekeepers in the city of San Francisco receive telegrams from their patrons and deliver the same to Western Union Telegraph Company's messengers. Whereupon, said company makes payment to such hotelkeeper or storekeeper of a sum represented by a percentage of the tolls charged by the company for sending the message. However, no payment is made to hotel or storekeepers for their own telegrams. It also appears that Postal Telegraph Cable Company receives messages for Western Union Telegraph Company and delivers the same to the latter through its Postal messenger boys, notwithstanding which Western Union Telegraph Company refuses to pay Postal Telegraph Cable Company any commission or compensation whatever for this service.

The Postal company alleges that messages which otherwise would be given it to forward are diverted to Western Union because of the interest of the hotel or storekeeper to divert such messages to the latter company.

We are urged to inhibit these payments on the ground that they are, in effect, rebates or unlawful payments back to the senders of messages.

Western Union Telegraph Company contends that these hotel and storekeepers are its agents, regularly appointed to receive messages for it, and that the percentage of the tolls paid is by way of compensation to such agents.

Western Union Telegraph Company insists that where the guests of a hotel delivered telegrams to the messengers together with the money in payment therefor, frequently the messengers failed to deliver this money to the company. That this resulted not only in the loss of the money to the company but also brought about much friction and ill feeling on the part of people who had paid for the message but later found it was not sent at all, or was sent collect.

It is urged that under the present arrangement the hotelkeeper receives the message and the money, delivers the message to the messenger and retains the money, or is responsible for it, and makes regular settlements with the company.

I am convinced that there is a further and perhaps more important motive on the part of Western Union Telegraph Company in this practice, and that is the obtaining of more business for its lines. Of course, if a hotel or storekeeper receives a compensation for messages sent

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through him over one company's lines and no compensation for such messages over another company's lines, he naturally will favor the one which pays him a compensation, and as hotels, and to a lesser degree stores, are places where a considerable telegraphic business originates, it is clearly to the advantage of a company to have a hotel or storekeeper financially interested to see that business for its line is had. However, I do not see that this in itself is a violation of any law, nor does it appear to be unfair even to the competing company as apparently all companies have an equal opportunity of making similar arrangements with hotel and storekeepers.

The questions presented to the Commission are:

1. Is Western Union Telegraph Company departing from its published and legal tolls and charges in paying a commission to the aforesaid hotel and storekeepers?

2. If the payment of this commission is not illegal, is Western Union Telegraph Company discriminating against Postal Telegraph Cable Company by failing and refusing to pay it the same commission for a like or greater service in receiving telegrams for Western Union Telegraph Company?

After a very careful reading of the briefs filed herein, I am convinced that the chief reliance of Postal Telegraph Cable Company is upon the contention that the payment of these commissions by Western Union Telegraph Company to hotelkeepers and storekeepers is, in effect, a departure from the tolls and charges legally in effect.

I do not believe that any discrimination occurs because Western Union Telegraph Company refuses to pay its competitor a commission on any business delivered. Surely either of these telegraph companies has the right to establish agencies and to employ agents of its own selection and choice and to compensate such agents, either by commission or fixed salary, and the fact that one telegraph company refuses to make its competitor an agent and to compensate it for business delivered is no discrimination in the performance of a public utility service or in the charging of public utility rates. This conclusion narrows the whole matter down to a determination as to whether the hotel and storekeepers are, in effect, the customers of Western Union Telegraph Company, so that any payment to them is, in effect, a rebate.

In answer to the defense of Western Union Telegraph Company that these hotelkeepers and storekeepers are agents of its own to whom it is paying a compensation, Postal Telegraph Cable Company urges that these hotel and storekeepers are themselves the customers of the telegraph company and that any payment to them is, in effect, a reduction of the toll or charge for the sending of the message. In support of this contention, our attention is called to the case of *United States* vs. *Lehigh*

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Valley Railroad Company, an opinion in which was rendered by the Federal District Court on the 26th day of March, 1915.

In that case Sheldon & Company were forwarders of freight. That is to say, they gathered freight from different persons and by combining this freight were able to ship in carload lots at a less rate than if each individual shipment was made by itself. The railroad company paid Sheldon & Company a commission which was a percentage of the published tariff rate. This the court held to be illegal on the ground that any commission or payment to them by the railroad amounted to a departure from the legal tariff rates, or, in other words, amounted to a rebate.

Postal Telegraph Cable Company argues that these hotel and storekeepers are the agents of their patrons and that as such agents they receive telegraphic messages and deliver them to the Western Union Telegraph Company in exactly the same capacity as the forwarders of freight, mentioned in the case just cited.

By express stipulation these hotel and storekeepers receive no compensation or any reduction in rate on any messages of their own, sent through Western Union Telegraph Company.

The evidence in this case shows no cutting down or reduction in any published rate by Western Union Telegraph Company charged the person who originally writes and sends the telegraphic message.

I believe the facts in this case establish such a different relationship between the hotel and storekeepers and the telegraph company as compared with the relationship of the forwarder and the railroad company in the case cited, that that decision is not of force here. The conclusion in the case cited is based upon the theory that the forwarder is in no sense an agent of the railroad company but rather occupies the position of a shipper dealing in every respect with the railroad company under the same rules and regulations as any other shipper. In this case the facts show that the hotel and storekeeper is an agent of the telegraph company, and I believe that legally a message or telegram entrusted to the hotelkeeper would be held to be entrusted to the telegraph company itself, and that any dereliction on the part of the hotel or storekeeper in handling such message or telegram would be held to be the dereliction of the telegraph company. It may very well be that the hotelkeeper is also in a sense an agent of the guests at his hotel, but this agency is not inconsistent with the agency for the telegraph company.

It should also be borne in mind that in the case of the forwarder of freight on the railroad the shippers for whom he acts obtain a lesser rate as a result of his activities, whereas in this case the patrons of the hotel or storekeeper pay the full tariff rate. Of course, if it appeared

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that the patron of the hotel or storekeeper received any reduction in rate, directly or indirectly, this case would have a very different aspect, but under all the evidence in this case I am satisfied there is no evidence showing a violation of any law, and furthermore, that it does not appear that any unfair or iniquitous practice is being indulged in. Therefore, I recommend that the complaint be dismissed.

Herewith a form of order:

ORDER.

Complaint having been made by Postal Telegraph Cable Company against Western Union Telegraph Company, and a public hearing having been had on said complaint and the Commission being fully apprised in the premises, and basing its order upon the opinion herewith preceding,

It is hereby ordered by the Railroad Commission of the State of California that the complaint herein be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1915.

DECISION NO. 2778.

J. W. RAY

vs.

PACIFIC ELECTRIC RAILWAY COMPANY.

Case No. 824.

Decided September 23, 1915.

Complainant attacks the rates of defendant company between Pacific Ocean Avenue Junction and Temple avenue, both points being within the limits of the city of Long Beach, and petitions the Commission to reduce such rates from 10 to 5 cents, contending that the present 10-cent rate is a material detriment to the development of the district adjacent to Temple avenue.

Held, That though territory may be within the incorporated limits of a city it does not necessarily mean that a street railway should operate at a 5-cent fare irrespective of the excessive mileage covered and the light traffic to be obtained. That defendant's present line is operated at a loss and was constructed only at the earnest solicitation of property owners who agreed at the time that the present rates would not be questioned. Complaint dismissed provided defendant establish at an early date the adjustments which it proposed at the hearing.

R. H. Jackson, for Complainant.

A. W. Ashburn, and *E. C. Denio,* for Defendant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an action to reduce from 10 to 5 cents the one-way fare on the line of defendant railway company between Pacific Ocean Avenue Junction and Temple avenue, both points within the city limits of Long Beach.

Complaint alleges that the present rates are discriminatory, work an injury and retard the growth of that part of Long Beach north of Anaheim road between Zaferia Junction and Temple avenue, also that school children do not use the railway freely because of excessive fares.

Defendant in its answer denies that the rates are discriminatory, avers that its 5 cent fares at Long Beach are not based on city limits, also that the car operations between Long Beach and Willowville via Zaferia and Temple avenue are unprofitable.

Complainant introduced a number of witnesses whose testimony was substantially identical with and differed but little from the allegations set forth in the complaint, viz, that the community between Zaferia and Temple avenue was not progressing, that property could not be sold or rented because it was beyond the 5 cent fare zone, also that children attending the new grammar school near Temple avenue walked to and from their homes on account of being unable to pay the 10 cent fare in effect between Zaferia and Temple avenue.

The defendant operates street and interurban cars in and around the city of Long Beach and as the boundaries of the city are irregular the distances established for the 5 cent zones are not uniform, being as follows:

Pacific Ocean Avenue Junction to Gaspur, 2.54 miles.
Pacific Ocean Avenue Junction to Willowville, 2.80 miles.
Pacific Ocean Avenue Junction to Forty-seventh Place, 3.56 miles.
Pacific Ocean Avenue Junction to Zaferia, 3.99 miles.

It will thus be seen that based on mileage, people in the Zaferia district now have a longer ride for 5 cents than prevails on the line operating to other points in Long Beach or to territory adjacent thereto.

Temple avenue is four-tenths of a mile from Zaferia on the main track of the Los Angeles-Newport Beach line and it is to this point complainant seeks to have the 5 cent fare extended. The fares between Long Beach and the points in the territory under discussion are as follows:

Zaferia, one way	$0 05
Temple avenue, one way	10
Temple avenue, round trip	15
Zaferia and Temple avenue, 30-trip, 90-day family commutation ticket	1 50

The one-way fare between Zaferia and Temple avenue is ten cents.

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Traffic manager for defendant testified that prior to February, 1914, cars were only operated between Willowville and Zaferia through Long Beach, the territory intervening on the loop between Willowville and Zaferia being taken care of by the main line trains of the Los Angeles-Newport Beach line, thus making it necessary for passengers destined Temple avenue, Signal Hill, Searby and Burnett to transfer either at Willowville or Zaferia. Early in the year 1914 a through service was established by having the local car make the complete circle. This loop car was placed in operation upon the earnest solicitation of a committee of citizens residing at Long Beach and other interested points. This committee in making its request for the through service admitted that it would not be profitable for some time, but nevertheless urged its establishment on the ground of convenience to the community, and also that the territory to be served would develop more rapidly.

The question of fares was discussed and the committee assured the railway management that same would not be called into question after the cars were placed in operation over the main line tracks of the Newport Beach line between Zaferia and Willowville. Shortly after the loop service was inaugurated the 30-ride commutation fare was reduced from $2.00 to $1.50, thus giving regular patrons a one-way fare of 5 cents, the rate this complainant seeks to have established for all traffic.

Defendant filed a number of exhibits showing the volume of traffic and the revenue. It is to be noted that the Long Beach city lines for the fiscal year 1914–1915, as compared with the year 1913–1914, suffered a decrease in revenue of $61,848.25, while the average per car mile dropped from .1871 cents to .1206 cents. This loss is attributed to the advent of the automobile and defendant's traffic manager testified that the lines were not earning sufficient revenue to meet actual operating expenses, to say nothing of interest on bonds and dividends to stockholders.

The exhibits of passenger traffic indicate that about 20 passengers per day travel to and from Temple avenue, while from points beyond, there are approximately 200 passengers per day. Forty-eight cars are operated in each direction during the 24 hours and these 96 cars carry an average of 2.3 passengers per trip between Zaferia and Willowville. During the sixteen months, May, 1914, to August, 1915, inclusive, 1,707 of the 30-ride commutation tickets were sold, an average of 107 per month, which would indicate that possibly half of the passengers are using commutation tickets and traveling for 5 cents per trip.

Defendant also testified that the boundary lines of the Temple avenue school district had been carefully checked and it was shown that the children residing adjacent to the railway only walked from two to three thousand feet on their way to school. Experience on other lines was

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to the effect that children did not board cars for so short a distance even at nominal fares.

Traffic manager for defendant voluntarily offered to publish a single fare of 5 cents between Zaferia and Temple avenue, extending the same reduction as far as it was possible toward Willowville, without breaking down the through rates on the Los Angeles-Newport Beach line; he also agreed to publish a children's 46-ride ticket at 3½ cents per ride between Zaferia and Temple avenue.

It is apparent to me that this action would never have been brought had the defendant in 1914 refused to establish the through loop service and continued to require passengers traveling to points between Willowville and Zaferia to transfer to the interurban main line cars at junction points. It does not follow that because a city annexes adjoining territory that a street railway system should as a matter of equity, necessarily be required to extend its 5 cent fare zone to conform to the new boundary lines. Territory may be within the incorporated limits of a city and still because of extreme mileage and lack of traffic be entirely outside of street car territory, for the greater part of the revenues of street car companies is received from intermediate passengers who are continually getting on and off the cars and ride but short distances.

Complainant has not sustained his claim for a five cent fare between Pacific Ocean avenue and Temple avenue in Long Beach, and I, therefore, recommend that the case be dismissed.

The defendant, Pacific Electric Railway Company, will be expected to publish at an early date a rate of 5 cents between Zaferia and Temple avenue and a 46-ride children's ticket at 3½ cents per ride between the same points.

I recommend the following form of order:

ORDER.

J. W. Ray having filed a complaint with this Commission against the Pacific Electric Railway Company, a hearing having been held thereon, and it appearing to the Commission that the complaint should be dismissed,

It is hereby ordered that the complaint of J. W. Ray versus the Pacific Electric Railway Company be, and the same is hereby, dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of September, 1915.

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Decision No. 2779.

IN THE MATTER OF THE APPLICATION OF SAN BENITO COUNTY LAND AND WATER COMPANY FOR PERMISSION TO RENEW TWO CERTAIN PROMISSORY NOTES, AND TO EXECUTE A MORTGAGE TO SECURE ONE OF SAID NOTES.

Application No. 1860.

Decided September 23, 1915.

Applicant applies for and is granted permission to issue two promissory notes bearing interest at the rate of 6 per cent per annum, one note in the sum of $25,000.00 to be issued to the Bank of Hollister in renewal of a note of a like face value, the other in the sum of $50,000.00 to the Savings and Loan Bank of San Benito County in renewal of a note of a like face value and to execute a mortgage covering its real estate as security therefor. Such notes to be issued for an initial period of three months and renewed if desired provided the combined periods shall not exceed three years.

Thos. E. O'Donnell, for Applicant.

Report of the Commission.

This is an application for an order authorizing the issue of two promissory notes, one to the Bank of Hollister, or order, to run three months for $25,000.00, with interest at 6 per cent per annum, payable semiannually, and one note to The Savings and Loan Bank of San Benito County, or order, for $50,000.00, payable in one year with interest at the rate of 6 per cent per annum, payable semiannually, the latter note to be secured by a mortgage upon all of the real estate of the applicant.

At the hearing, testimony was offered to the effect that applicant is incorporated under the laws of the State of California with an authorized and issued capital stock of $200,000.00, for the general purpose of developing and selling water for irrigation purposes. The company had, about the time of its organization, bought and sold some land, but is not now engaged in the land business.

Some of the present stockholders of the company, together with the Paicines Ranch Company, a land corporation, originally purchased the works of the Hollister Irrigation Company, and the property so purchased was later conveyed to applicant.

On April 14, 1911, applicant, with certain of its stockholders and said Paicines Ranch Company, executed and delivered to the Bank of Hollister a one-year note for $50,000.00, with interest at 6 per cent per annum, payable annually, said note being secured by a mortgage upon all of applicant's real property. On June 4, 1912, said bank assigned

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said note and mortgage to The Savings and Loan Bank of San Benito County, which has ever since been, and now is, the owner and holder of the said note and mortgage. On October 9, 1912, applicant executed and delivered to the Bank of Hollister its one day note for $25,000.00, with interest at 6 per cent per annum, payable semiannually, endorsed by its officers and stockholders.

Upon the execution and delivery of said notes applicant received from the Bank of Hollister the total sum of $75,000.00 therefor, there being no deduction for discount or commission. This sum of $75,000.00 has been used in the development of the property, in the purchase of land and certain rights from the said Paicines Ranch Company and in the construction of a storage reservoir and necessary ditches used in connection therewith. The Ranch company paid one-half of the money in the original purchase of the Hollister water company's property and thereafter received one-half of the stock of applicant, but its stock has since been disposed of, part or all of the present holders thereof being stockholders in the Ranch company.

The Ranch company owns certain interests in certain ditches conveyed by it to applicant and part of the water that flows into them, reserved under contract with the applicant made at about the time it acquired the reservoir site from the Ranch company.

The Ranch company is reported willing to join in the execution of the new note because of its present obligation upon the existing note and its interest in maintaining the present relation between its property and the property of applicant.

Applicant also offered testimony to the effect that its properties have cost between $105,000.00 and $110,000.00, and that their present value is considered $150,000.00; that the stockholders have advanced in assessments the sum of $13,425.00, used in the payment of interest charges on said existing notes, which item is shown on the books as "accounts payable"; and that the stockholders propose to carry the interest charges on the proposed new notes by assessments so far as may be necessary in the future. It is understood with the banks that the proposed new notes may run long beyond their maturity, the terms of the notes being made in accordance with the custom of the banks.

Applicant anticipates an ultimate gross annual revenue of $12,000.00, or more, when its system is in full service. Its ditches now reach about 4,000 acres of land capable of irrigation and it is serving about 2,500 acres in widely varying amounts, depending upon conditions of rainfall and use of land.

We find as a fact that the purposes for which applicant desires to issue these notes are not in whole or in part reasonably chargeable to operating expenses or to income, but are properly chargeable to capital account.

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ORDER.

San Benito County Land and Water Company having applied to the Railroad Commission for an order authorizing the issuance of two certain promissory notes, and a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which said company desires to issue said notes are not in whole or in part reasonably chargeable to operating expenses or to income, and it appearing to the Commission that the application should be granted,

It is hereby ordered by the Railroad Commission of the State of California that the San Benito County Land and Water Company be and the same is hereby authorized to issue its promissory notes and mortgage as follows:

1. Promissory note payable to Bank of Hollister, of Hollister, California, or order, three months from the date thereof, in the sum of $25,000.00, with interest thereon at the rate of 6 per cent per annum from its date, payable semiannually, else to compound, for the purpose of taking up existing note in the same amount payable to the same payee.

2. Promissory note payable to The Savings and Loan Bank of San Benito County, of Hollister, California, or order, one year after its date, in the sum of $50,000.00, with interest from its date at the rate of 6 per cent per annum, payable semiannually, else to compound; payment of said note and interest to be secured by mortgage covering all of the real property of said company and being in the form of the proposed mortgage attached to the application as Exhibit "C"; said note and mortgage being issued for the purpose of taking up existing note and mortgage in the same amount now held by payee.

The authority hereby given is subject to the following conditions:

(*a*) The promissory notes hereby authorized shall be issued only at their full face value and in substitution for or renewal of the existing notes hereinbefore described which are to be satisfied. San Benito County Land and Water Company may, without further order from the Railroad Commission, issue renewal or renewals or extensions of the notes hereby authorized to be issued, provided that the rate of interest and other terms shall not be made more burdensome, and that the combined term or terms of the note or notes hereby authorized to be issued, with the renewals or extensions thereof, shall not exceed a total period of three years from the date of first issue under this authorization.

(*b*) San Benito County Land and Water Company shall report to the Railroad Commission within ten days after the issue of any note hereby authorized to be issued, the fact of the issue of the note, the terms and conditions thereof, and the disposition of the proceeds.

(*c*) The authority given to issue promissory notes shall apply only to such promissory notes as may be issued prior to September 20, 1917.

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(*d*) The approval herein given of said mortgage is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to any other legal requirements to which said mortgage may be subject.

(*e*) The authority hereby given to issue promissory notes shall not become effective until San Benito County Land and Water Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 23d day of September, 1915.

DECISION No. 2780.

TOWN OF HOLLISTER

vs.

HOLLISTER WATER COMPANY.

Case No. 639.

IN THE MATTER OF THE INVESTIGATION INTO THE RATES OF HOLLISTER WATER COMPANY FOR WATER SUPPLIED IN UNINCORPORATED TERRITORY IN SAN BENITO COUNTY, CALIFORNIA.

Case No. 709.

IN THE MATTER OF THE APPLICATION OF HOLLISTER WATER COMPANY FOR AN INCREASE IN RATES TO BE CHARGED BY AND PAID TO IT FOR FURNISHING, DISTRIBUTING AND SELLING ITS WATER TO THE PUBLIC USERS THEREOF AND ESPECIALLY TO THE TOWN OF HOLLISTER, AND THE INHABITANTS THEREOF.

Application No. 1489.

Decided September 24, 1915.

REPORT OF THE COMMISSION.

ORDER DISMISSING APPLICATION FOR REHEARING.

In its application for rehearing the town of Hollister objects only to that part of the Commission's order wherein a rate of $100.00 per month was fixed to be paid by the town of Hollister for fire service.

The entire application for rehearing consists of an argument against the power of this Commission to compel the town of Hollister to pay any rate whatever for fire purposes.

It is urged that because the ordinance granting the franchise, dated September 27, 1875, provides that the city should always have water free for fire protection purposes that this is a contract which can not be

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interfered with by the Railroad Commission, and that the fixing of a rate to be paid by the town of Hollister for fire protection purposes is such interference.

No authorities are cited in support of this contention, and it would serve no purpose to again discuss the numerous decisions of this Commission to the effect that it has power to fix rates, regardless of contracts.

The application for rehearing herein is hereby dismissed.

Dated at San Francisco, California, this 24th day of September, 1915.

DECISION No. 2781.

BEN NELSON, GEORGE H. WALSH, AND R. D. SMITH

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND ROSEVILLE TELEPHONE COMPANY.

Case No. 833.

Decided September 24, 1915.

Complainants, residing at Rocklin, are employed by the Southern Pacific Company, from whom they are subject to call at any time. At present they have telephone connections with the Roseville exchange of the Roseville Telephone Company but residing in Rocklin, territory served by The Pacific Telephone and Telegraph Company, the Pacific company directed that the Roseville company disconnect such services originating on Pacific company's territory. Complainants accordingly petition the Commission to permanently enjoin the telephone companies from enforcing such disconnecting rule until such time as the Pacific company provides continuous service at Rocklin.

Held, As per agreement reached at the hearing, the Pacific company shall connect, at its own expense, the lines of Smith and Walsh with the roundhouse of the railroad company and shall permit the continuance of Roseville service to Nelson until such time as it shall provide continuous service at Rocklin.

J. B. Gibson, for the Complainants.

Jas. T. Shaw, for the Defendants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The complainants in this proceeding are residents of the town of Rocklin, Placer County, California, and are employed by the Southern Pacific Company. Until or about the year 1908, the Southern Pacific Company maintained a roundhouse and yards at Rocklin from which the complainants received their orders and to which they were required

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to report for duty, and during or about that year the railroad company moved its roundhouse and yards to the town of Roseville, about four miles distant from Rocklin. The complainants have purchased their own homes at Rocklin and after the removal of the roundhouse and yards to Roseville by the railroad company they secured the use of two telephone lines between Rocklin and Roseville in order to enable them to be in touch with their work when necessary, being subject at any or all times to call by the railroad company.

One of the defendants, Roseville Telephone Company, owns and operates a telephone exchange and system in Roseville and contiguous territory. The town of Rocklin is situated beyond the territory within which the Roseville Telephone Company operates, and it is served or purported to be served by The Pacific Telephone and Telegraph Company, the other defendant in this case. For some time the lines which the complainants secured for their use terminated on telephones which were located in the roundhouse and in the yard office at Roseville, but had no other connection in Roseville. During the year 1911, the line with which the home of one of the complainants, Mr. Nelson, had connection at Rocklin was connected at Roseville with the Roseville company's switchboard, thereby affording a means of communication from Rocklin not only with the railroad company's office over the Roseville company's system, but also with any other telephone connected with the Roseville exchange. Until the month of February, 1914, the only Roseville connection available to the other complainants, Messrs. Walsh and Smith, from their homes in Rocklin was in the railroad company's offices, but during that month the line with which they had connection was also connected with the Roseville company's switchboard, which likewise gave them access to all telephones in Roseville.

The Pacific Telephone and Telegraph Company owns and is operating long distance toll lines over which communication may be had between these two towns and maintains that any service had between the two towns should be had over its toll lines, but as its Rocklin office closes during certain hours this means of intercommunication is limited. However, having had its attention called to the existence of these connections between complainants' homes in Rocklin and the Roseville company's switchboard, it notified the Roseville company that the connections must be removed. The Roseville company accordingly notified the complainants that the lines would be disconnected from its switchboard, whereupon, and before the notice of disconnection was executed, this complaint was filed with the Commission. Notwithstanding the complaint, however, and before it was set for hearing, the complainants' lines were disconnected. The Commission's attention having been called to this action on the part of the defendants, service was promptly

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ordered restored and the connections were re-established pending a hearing of the complaint by the Commission.

The complainants, as previously stated, are subject to call at any and all times by the railroad company and they allege that unless they can be within call at Rocklin at all hours it will be necessary either that they give up their present homes or surrender their positions with the railroad company. They ask, therefore, that the defendants be perpetually restrained from discontinuing their present connections with the Roseville switchboard or until such time as The Pacific Telephone and Telegraph Company shall provide continuous twenty-four hour service in the town of Rocklin to enable them to reach Roseville over its toll lines.

It is, of course, obvious that if the present arrangement is used to any considerable extent or at all by the complainants in calling subscribers at Roseville other than the railroad company's offices, there would be more or less hesitancy on their part to surrender this privilege. It is also obvious that even if continuous service were provided at Rocklin by The Pacific Telephone and Telegraph Company, thereby enabling the complainants to call Roseville or to be called by Roseville at any time necessary, a toll charge would be exacted each time its toll lines were used if connection with the Rocklin exchange were substituted for the present arrangement. However, while recognizing these facts, complainants have testified that their chief necessity is to have continuous access to the roundhouse and yard office in Roseville, and that if The Pacific Telephone and Telegraph Company will provide continuous service at Rocklin to render this possible, they will be willing to surrender the present arrangement and accept service through the Pacific company's Rocklin exchange.

So far as the defendant, Roseville Telephone Company, is concerned, it apparently has become involved in this controversy through a prior management and that it now has no desire to extend its service beyond the territory within which it may lawfully operate.

The present receipts of the Rocklin exchange, according to The Pacific Telephone and Telegraph Company's testimony, are by far too small to enable it to employ sufficient additional operators to provide continuous service except at a considerable loss. However, by voluntary and mutual agreement of all of the parties to this complaint, it has been agreed that if possible to secure another location for the Rocklin office, which may enable it to provide continuous service without unreasonably increasing the operating expenses, the Pacific company will do so and will take immediate steps in an effort to bring about this result. It is also agreed that, in the meantime, the Pacific company will proceed to restore the former connections in the roundhouse and yard

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office for the use of Complainants Walsh and Smith and upon the completion of these connections will discontinue their present connection with the Roseville switchboard, this change to be made at the sole expense of the Pacific company and to continue until continuous service at Rocklin shall have become an accomplished fact. It is further agreed that the present connection of Complainant Nelson's line with the Roseville switchboard shall not be disturbed until such time as continuous twenty-four hour service may be established at Rocklin, and that after this has been arranged Complainant Nelson's connection with the Roseville switchboard and Complainants Walsh's and Smith's connections, which are for the present to be restored in the roundhouse and yard office, will be discontinued and that the complainants will accept service through the Pacific company's Rocklin exchange.

Without expressing an opinion as to any of the issues involved in this complaint, there is now apparently no reasonable objection to the agreement voluntarily proposed by the complainants and the defendants, and I shall accordingly recommend that the complaint be dismissed as to Complainants Walsh and Smith and that, until such time as twenty-four hour service may be established at Rocklin by The Pacific Telephone and Telegraph Company, Complainant Nelson's present service shall not be disturbed.

ORDER.

Complaint having been made to this Commission by Ben Nelson, George H. Walsh, and R. D. Smith, complainants, versus The Pacific Telephone and Telegraph Company, a corporation, and Roseville Telephone Company, a corporation, defendants, protesting against the discontinuance of the said complainants' present service at Roseville, California, by said defendants, and asking that the said defendants be perpetually restrained therefrom or until such time as The Pacific Telephone and Telegraph Company shall provide continuous service in the town of Rocklin, and a hearing having been held and an agreement having been voluntarily entered into between the said complainants and the said defendants for the mutual adjustment of this complaint, as set forth in the preceding opinion, and a stipulation agreeing to its dismissal having been filed with this Commission,

It is hereby ordered that, as to Complainants Walsh and Smith, the complaint be and it is hereby dismissed without prejudice.

And it is hereby further ordered that, until such time as continuous service may be provided by The Pacific Telephone and Telegraph Company at its Rocklin exchange or until the further order of this Commission, the present connection of Complainant Nelson's line with the Roseville switchboard of the Roseville Telephone Company shall not be disturbed.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of September, 1915.

DECISION No. 2782.

IN THE MATTER OF THE APPLICATION OF THE BOARD OF SUPERVISORS OF LOS ANGELES COUNTY, CALIFORNIA, FOR PERMISSION TO INSTALL A GRADE CROSSING OVER THE TRACKS OF THE PACIFIC ELECTRIC RAILWAY COMPANY AT THE INTERSECTION OF AMERICAN AVENUE AND BURNETT STREET, NEAR THE CITY OF LONG BEACH.

Application No. 1716.

Decided September 24, 1915.

Applicant applies for permission to construct at grade, Burnett street across the double track of the Pacific Electric Railway Company near the city of Long Beach, to which construction the railway company objects and an investigation showing that Burnett is not a through street, is very seldom used, and that the opening thereof will serve only a few families in this sparsely settled district, application denied.

W. E. Hinshaw and *Hugh Gordon,* for Board of Supervisors.

Wilbur F. Downs, for City of Long Beach.

Frank Karr, for Pacific Electric Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

In this application the board of supervisors of Los Angeles County, California, asks the Commission's permission for the installation and maintenance of a crossing at grade over the private right of way and the double track of the Pacific Electric Railway Company at the intersection of American avenue and Burnett street, near the city of Long Beach, Los Angeles County, California.

The Pacific Electric Railway Company objects to the construction of a grade crossing at this point and is unwilling to grant to the county an easement over its right of way.

The applicant recites in general that the interests of the traveling public in the county require this construction, but otherwise gives no reasons why public necessity and convenience demand this crossing.

The situation here is unusual inasmuch as Burnett street, the public road which it is desired to extend over the tracks of the railroad, at

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present lies wholly within the city limits of Long Beach, and the county has no jurisdiction over this street. The application is nevertheless made by the county for the reason that the crossing, if granted, will be outside of the city limits and in the unincorporated portion of the county. An inspection of the map accompanying the application will make this clear. The right of way of the Pacific Electric Railway Company and American avenue, a public highway running parallel with the railway on both sides of the tracks, form a narrow strip of territory 124 feet wide, extending for a distance of over half a mile into the city of Long Beach. The extension of Burnett street where it crosses this strip, will therefore lie outside the jurisdiction of the city.

It is apparent that the crossing will not benefit the county road travel, but is asked solely in the interest of certain residents of the city of Long Beach whose properties are located in the immediate neighborhood of this proposed crossing. Burnett street is not a through street in any sense of the word. To the east of the proposed crossing it is open for only a few blocks and to the west of the railroad's right of way this street ends in open fields and the slough of the Los Angeles River. This slough is overgrown with willow brush and flooded during the rainy season of the year; and it was testified at the hearing that the extension of this street in either direction was not contemplated at this time.

A quarter of a mile to the north of the proposed crossing, Willow street is open across the Pacific Electric Railway Company's right of way, and an equal distance to the south of Burnett street there is another grade crossing at Hill street. As stated heretofore, an improved county highway parallels the Pacific Electric Railway Company on both sides of the right of way and establishes very good connections in a north and south direction. The current of road traffic parallels the current of railway traffic, and is distinctly north and south rather than east and west across the tracks of the Pacific Electric Railway Company. This is true altogether of the heavy automobile travel between Los Angeles and Long Beach and also of the merchandise delivery travel between Long Beach and this neighborhood. The land tributary to the crossing is at this time but sparsely built up, and the convenience of not more than a dozen families is in question. These families do not, in my opinion, suffer any hardship now because of the lack of this crossing.

The Commission, therefore, finds itself confronted here with one of the numerous cases where the problem of public necessity and convenience must be weighed against the problem of added risk and hazard to the operation of the railroad and against the danger to human life. The evidence shows that in the present case frequent high-speed service must be maintained over a double-track roadbed and that more than three hundred trains would run over this grade crossing every day.

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The Commission is not unmindful of the fact that grade crossings under present conditions can not be avoided and that permission will have to be given in the future for the construction of new ones; but in this instance it is my opinion that the need at this time for this crossing is not nearly great enough to warrant the Commission in placing it before the safety of the public and of railroad operation. If in the future this neighborhood builds up and the population increases, it may well be that the construction of Burnett street across the railroad will become a real necessity.

It is my recommendation that this application be denied, and I submit the following form of order:

ORDER.

Board of supervisors of Los Angeles County, California, having filed its application with the Commission for permission to construct Burnett street, a public highway, at grade across the private right of way and the double track of the Pacific Electric Railway Company at the intersection of American avenue and Burnett street, near the city of Long Beach, in Los Angeles County, California; and a public hearing having been held at which all interested parties were present; and it appearing to the Commission that the public convenience and necessity do not require the granting of this application and that the construction of a grade crossing at the point indicated would be against public policy and not in the best interests of the city of Long Beach and of the county of Los Angeles,

It is hereby ordered that the same be and is hereby denied without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of September, 1915.

DECISION NO. 2783.

CALIFORNIA RICE MILLS

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 831.

Decided September 28, 1915.

Complainant attacks the rates of defendant company on paddy rice from points in Butte and Plumas counties to San Francisco, contending that defendant has

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lower rates on grain and that as all dictionaries define rice as grain, grain rates should apply. It also asks to be awarded reparation in the sum of $3,173.41 covering excess amounts collected on shipments made during the period November 12, 1913, to June 14, 1915.

Held, That when rice was first grown near Gridley, the railroads through agreement with shippers established the present rates on rice, that rice has never been considered for shipping purposes in the same class as wheat, barley, etc., and as complainants do not show that the present rate is exorbitant, complaint dismissed.

Chapman & Thompson, for Complainant.

C. W. Durbrow and *Geo. D. Squires*, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

The complainant in this proceeding is a corporation engaged in the buying, milling and marketing of paddy rice or rough rice and the products thereof, its principal place of business being located at San Francisco, California. In its complaint filed July 20, 1915, it alleges that the carload rates charged by the defendant during the period November 12, 1913, to June 14, 1915, for the transportation of paddy rice to San Francisco and Biggs, California, were as follows:

To—	From—	Rate in cents per 100 pounds
San Francisco	Durham	24
San Francisco	Richvale	17½
San Francisco	Biggs	17½
San Francisco	Gridley	17½
San Francisco	Marysville	17½
Biggs	Mello	14
Biggs	Chandler	13

And that the rates as charged were excessive and discriminatory for the reason that they exceeded the rates published in defendant's Local, Joint and Proportional Tariff No. 793, C. R. C., No. 1761, which provides rates on grain and grain products, between the same points, lower than the rates on paddy rice, to wit:

To—	From—	Rates on grain in cents per 100 pounds
San Francisco	Durham	13½
San Francisco	Richvale	13½
San Francisco	Biggs	13½
San Francisco	Gridley	12½
San Francisco	Marysville	11½
Biggs	Mello	7½
Biggs	Chandler	6½

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Grain and Grain Products Tariff No. 793, C. R. C. No. 1761, of the defendant, in Rule 20–A, page 35, provides:

> "Rates named in tariff on grain and grain products (when specific reference is made to this rule) will apply on the following articles, viz: grain, whole, cracked, ground, chopped or rolled, *not otherwise indexed by name* (not including cereal food, flaked, puffed or toasted and cereal coffee) and articles taking grain rates * * *."

The above mentioned rule includes an extensive list of various grains and grain products, embracing rice bran, rice hulls, ground and rice polish, but does not include paddy rice or rice.

Complainant bases its claim for the application of grain rates to shipments of paddy rice wholly upon the fact that the various standard dictionaries of the English language define rice as a grain and it therefore contends that paddy rice comes under the heading of "*Grain, whole, not otherwise indexed by name,*" provided for in defendant's grain and grain products tariff, hereinbefore mentioned, and asks that this Commission so classify paddy rice and order defendant to pay complainant reparation in the sum of three thousand one hundred and seventy three dollars and forty-one cents ($3,173.41), together with interest from date of collection to cover alleged overcharge on various carloads moved between the points in question during the period November 12, 1913, to June 14, 1915. Complainant further asks that defendant be ordered to apply the grain rates as prescribed in its Local, Joint and Proportional Tariff No. 793, C. R. C. No. 1761, to all shipments of paddy rice.

Complainant in this case brings no evidence before the Commission that would tend to show that the rates as charged on paddy rice are of themselves unreasonable; neither does it show from a commercial or transportation standpoint any reason why rates on paddy rice should be the same as the rate charged on wheat, oats or barley, but bases its entire contention for the grain rates, as heretofore stated, on the dictionary definition, viz: "Rice is a grain."

It appears from the evidence that during the year 1910 when first experiments in rice culture were made near Biggs, California, defendant herein was called upon by the growers to establish a rate for the movement of paddy rice from Biggs to San Francisco, and in compliance with such request, a specific commodity rate of 17½ cents per one hundred pounds was published, which rate was satisfactory to the shippers and no complaint has ever been made against the reasonableness of this commodity rate. It may be true that strict dictionary definition classifies paddy rice as a grain, but it is evident that both the railroads and the shippers considered paddy rice as a different commodity, justifying a different rate than grain, such as wheat, barley, oats, etc., and so the commodity rate was established by agreement and paid without protest, and there can be no question from the evidence in this case that

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both the railroads and the shippers proceeded upon the theory that paddy rice should be given a rate higher than that provided for grain.

I believe it should be held in this case that the legal rate for paddy rice during all the times herein mentioned was and is the commodity rate as set out above, hence that this complaint should be dismissed.

Herewith a form of order:

ORDER.

The complaint and answer having been filed in the above entitled proceeding, and a public hearing having been held thereon, and the Commission being fully apprised in the premises,

It is hereby found as a fact that the legal rate for paddy rice from Biggs to San Francisco over the lines of the Southern Pacific Company during all of the times herein mentioned, was a specific commodity rate of 17½ cents per one hundred pounds; and,

Basing its order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that the complaint herein be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of September, 1915.

Decision No. 2784, grade crossing; not printed. See end of volume.

DECISION NO. 2785.

RIVERS BROTHERS COMPANY, INC.

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 406.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY TO CANCEL CERTAIN FRUIT AND VEGETABLE RATES AND PUBLISH IN LIEU THEREOF A NEW SCHEDULE.

Application No. 1700.

IN THE MATTER OF THE APPLICATION OF ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO CANCEL CERTAIN FRUIT AND VEGETABLE RATES AND PUBLISH IN LIEU THEREOF A NEW SCHEDULE.

Application No. 1727.

Decided September 28, 1915.

Complainant herein originally attacked defendant's rates on apples from Beaumont and Crafton to Los Angeles and petitioned for reparation which was awarded

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and defendant directed to eliminate from its tariffs the restriction "for canners and driers only"; this order was subsequently set aside and a rehearing granted at which time consideration was given to applications of Southern Pacific Company and Santa Fe Railway Company to change their present schedules of rates on certain fruits and vegetables.

Held, After consideration of the evidence tendered, that the present rates on apples, Beaumont and Crafton to Los Angeles, is excessive and a rate of $1.75 per ton, carload lots of 24,000 pounds, established to become effective within twenty days. Complainant also awarded reparation of the excess amounts paid above this sum on all shipments since June 5, 1915. Applicants permitted to amend schedules as applied for, provided that such changes do not bring about increases in any rate active at the present time.

Charles Clifford and *Frank K. Clifford,* for Complainant.

George D. Squires, for Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

The three above entitled proceedings involving rates on fruit and vegetables from identical points were heard together, and a single opinion and order will cover all three proceedings.

The original petition in Case No. 406 was filed June 5, 1913, alleging that the rates charged for the transportation of apples in carload lots from Crafton and Beaumont to Los Angeles were illegal inasmuch as they exceeded a restricted rate of $1.75 per ton applying on "Fresh Fruit for Canneries and Driers Only." The Commission found that the restriction placed on this rate "for Canneries and Driers Only" was unlawful and that the legal rate applicable to apples in carloads, between the points in question, was $1.75 per ton. Reparation was awarded of the difference between the amounts paid and what would have been paid at the rate found to be legal.

Defendant filed a petition for rehearing alleging that the Commission erred in its finding that a legal rate could be made by simply striking out of the tariff the unlawful restrictions attached to the rate, also that the evidence did not sustain an award of reparation. This petition for rehearing after having been argued was denied October 21, 1914. On May 25, 1915, complainant filed an amended complaint alleging that the rates paid on shipments of apples in carloads from Crafton and Beaumont to Los Angeles, referred to in Case No. 406, were unjust, excessive and unreasonable, and prayed that the Commission fix a just and reasonable rate. On May 28, 1915, the Commission set aside its previous orders and reopened the case for a further hearing.

Application No. 1700 of the Southern Pacific Company asks permission to amend its rates on "Fruit for Canneries and Driers Only," as shown in Tariff Fruit Specials No. 4, C. R. C. 99, also to amend the rates

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on "Fresh Vegetables for Canneries and Driers Only," as shown in Freight Tariff No. 796, C. R. C. 1788, by canceling certain rates which are not used at all, or seldom used, and by eliminating the unlawful restriction "For Canneries and Driers Only," substituting therefor a description of the package reading, "Fruit, Deciduous, Fresh or Green, Orchard Run in Lug Boxes"; "Vegetables, Fresh or Green in Lug Boxes."

Application No. 1727 of The Atchison, Topeka and Santa Fe Railway Company asks permission to amend its rates on fruit and vegetables carried in Tariff No. 11992, C. R. C. 323, by canceling out of the tariff all of the rates shown on pages 32 to 43 inclusive, under which there has been no movement in the past, also to strike out the restrictive words, "Only when for Canneries, Driers, Pickling or Manufacturing Purposes," substituting therefor a description of the package reading "Fruit, Deciduous, Fresh or Green, Orchard Run in Lug Boxes"; "Vegetables, Fresh or Green, Field Run, in Lug Boxes."

Application No. 1700 of the Southern Pacific Company and Application No. 1727 of The Atchison, Topeka and Santa Fe were originally filed with the Commission requesting authority informally to amend tariffs in order to eliminate the unlawful restrictions now published, and to cancel out of the tariffs certain rates which are no longer used for the transportation of unpacked fruit and vegetables moving in lug boxes.

Witnesses for both applicants testified that the restricted rates were established when such rates were common and were put into effect for the purpose of assisting in building up the canning and preserving industries. They claim the rates were made unusually low for both carload, and less than carload, because of the kind of fruit and vegetables shipped and the manner of handling, it being shown that these commodities in lug boxes can be transported in any kind of equipment, are promptly unloaded from cars, and are not subject to damage as is the carefully packed fruit forwarded direct to the market for consumption.

The practice of assessing different rates for fruits, vegetables and other commodities dependent upon the kind of packages employed is not unusual, and as the principal reason for making the changes in these tariffs is to remove the unlawful restrictions, I believe these applications should in part be granted. The order herein provides that the carriers may cancel the rates upon which traffic has ceased to move but are not authorized to increase any active rates at present in effect on either citrus or deciduous fruits.

Complainant, Rivers Brothers Company, Inc., in support of its amended complaint contending that the present rates on apples from

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Crafton and Beaumont to Los Angeles are excessive and unreasonable, offered a number of exhibits comparing the rates per ton, per ton mile, and per car mile with the rates on fruit obtaining between points in other parts of the State. The distance from Crafton to Los Angeles is 69.6 miles, the rate $2.75 per ton, making a rate of 4 cents per ton mile; the distance from Beaumont to Los Angeles is 80.2 miles, the rate $1.75 per ton, plus $5.00 per car, making a rate of approximately 2.6 cents per ton mile. Particular attention is called to the fact that the rate on oranges and lemons, Crafton and Beaumont to Los Angeles, is $1.75 per ton. There also is a rate of $1.75 per ton on fruit Montalvo to Los Angeles, a distance of 79 miles, and the same rate from Banning to Pasadena, a distance of 85 miles. Attention is drawn to the rates applying into San Francisco, Sacramento, Stockton and Fresno. In practically all of these exhibits the present Crafton-Beaumont to Los Angeles apple rates yield the greatest earnings.

In another exhibit it is shown that if a rate of $1.75 per ton were established on apples from both Crafton and Beaumont to Los Angeles the earnings would be 2.52 cents per ton mile from Crafton, a branch line point, and 2.19 cents per ton mile from Beaumont, a main line point; also, that as the shipments load approximately 35,000 pounds per car the earning per car mile is 43.8 cents from Crafton and 38.3 cents per car mile from Beaumont.

It was testified that refrigerator cars are freely used during the apple shipping season in southern California for the transportation of all kinds of freight, both carload and less than carloads, the reason being that after the citrus and deciduous fruit crops have moved there is but little demand for this kind of equipment, which is therefore used for local traffic, and defendant is accordingly put to no additional expense in furnishing refrigerator cars for the transportation of apples.

A witness for defendant sought to analyze the comparisons of rates in an endeavor to prove that none were of any value in determining the reasonableness of the apple rates. The history of some of the rates was explained but no positive evidence introduced to prove that the rates shown in the exhibits, many of which had been in use for a great number of years, were unremunerative, or to show any material difference in transportation conditions.

A careful consideration of all the evidence shows that a rate of $1.75 per ton is a just and reasonable rate for the transportation of apples, in carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles.

The original decision in Case No. 406 ordered the payment of reparation on the theory that the restriction placed on the rate of $1.75 per ton making it apply on "Fresh Fruit for Canneries and Driers Only"

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was an illegal restriction, and, therefore, the rate of $1.75 was an open rate applicable to all fruit.

A careful review of the authorities, however, has convinced me that this determination was contrary to the decisions of the Supreme Court of the United States, and, therefore, can not stand.

This Commission has held notably in Cases Numbers 596, 669 and 672—Steiger Terra Cotta and Pottery Works and other complainants versus Southern Pacific Company—that to justify reparation damage to complainant as a result of paying the rate found by the Commission to be unreasonable must be shown.

I find in this case, No. 406, Rivers Brothers Company, Inc., have shown that they were damaged to the extent of the difference between the rate which they paid and the rate of $1.75 herein found to be reasonable from the time they filed their original complaint on June 5, 1913.

The evidence shows that plaintiff sold its apples in competitive markets and that it was impossible to add to the price of its apples in such markets the freight rate. Hence any rate above a reasonable rate which it paid for transporting these apples to the competitive market by that much reduced its return on these apples whether it made a profit or not. It seems to me that under all the facts shown by the evidence in this case it is only just that reparation be allowed this plaintiff from the time it complained of the rate to the time of the going into effect of the rates herein found to be reasonable.

I recommend the following form of order:

ORDER.

Rivers Brothers Company, Inc., having complained that the rates of the Southern Pacific Company for the transportation of apples, carloads, from Crafton and Beaumont to Los Angeles are excessive and unreasonable, and Southern Pacific Company having made application to cancel certain fruit and vegetable rates and publish in lieu thereof new schedules of rates, and The Atchison, Topeka and Santa Fe Railway Company having made application to cancel certain fruit and vegetable rates and publish in lieu thereof new schedules of rates, and a public hearing having been had in all three of such matters and the same having been submitted and being now ready for decision, and the Commission being fully apprised in the premises,

It is hereby found as a fact that the rate of $1.75 per ton on apples, carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles is a just and reasonable rate to be charged by Southern Pacific Company.

It is hereby further found as a fact that Rivers Brothers Company, Inc., has been damaged in a sum equal to the difference between the rate paid for shipments of apples by said company over the lines of

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Southern Pacific Company from June 5, 1913, and the rate of $1.75 herein found to be the just and reasonable rate, and that said Rivers Brothers Company, Inc., is entitled to reparation in said amount.

Basing its order on the foregoing findings of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that Southern Pacific Company publish and file with this Commission on or before twenty days from the date of service of this order, a rate of $1.75 per ton on apples, carloads, minimum weight 24,000 pounds, from Crafton and Beaumont to Los Angeles.

It is hereby further ordered that Southern Pacific Company pay by way of reparation to Rivers Brothers Company, Inc., a sum equal to the difference between the rate paid for the shipment of apples by Rivers Brothers Company, Inc., over the lines of Southern Pacific Company from Crafton and Beaumont to Los Angeles from June 5, 1913, and the rate of $1.75 herein found to be reasonable for such shipments.

It is hereby further ordered that if within a period of sixty days from the date of this order Rivers Brothers Company, Inc., and Southern Pacific Company can not agree upon an amount of reparation due under this order, said parties, or either of them, may appear before the Commission and submit proof, whereupon the Commission will determine the amount of reparation due. If said parties within said period of sixty days agree upon the amount of reparation due under this order, report shall be made to this Commission of the amount agreed upon, whereupon a supplemental order will be issued ordering Southern Pacific Company to pay said amount to Rivers Brothers Company, Inc.

It is hereby further ordered that Southern Pacific Company is hereby authorized to amend certain items in its Tariff Fruit Specials No. 4, C. R. C. 99 and certain items in its Freight Tariff No. 796, C. R. C. 1788, as set out in its Application No. 1700, except that said company is not authorized to make any changes which will bring about increases in rates.

It is hereby further ordered that The Atchison, Topeka and Santa Fe Railway Company is hereby authorized to amend certain items in its Tariff No. 11992, C. R. C. 323, as set out in its Application No. 1727, except that said company is not authorized to make any changes which will bring about an increase in rates.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 28th day of September, 1915.

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DECISION No. 2786.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO WAREHOUSE COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK OF THE PAR VALUE OF TWO HUNDRED THOUSAND DOLLARS.

Application No. 502.

Decided September 28, 1915.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

Good cause appearing,

It is hereby ordered that section 1, paragraph "b" of the Commission's order of July 23, 1913 (Decision No. 808), in the above entitled matter be and is hereby amended so as to read as follows:

"Sacramento Warehouse Company may issue and sell its common capital stock of the par value of not to exceed $138,890.00 so as to net said company not less than 90 per cent in cash of the par value thereof, and may apply the proceeds only for the purpose of constructing and completing its proposed six-story and basement steel frame concrete warehouse building, to be erected on said lot No. 2 in the block bounded by R, S, Eleventh and Twelfth streets, in the city of Sacramento, and also for the payment of the necessary organization and office expenses, including the general manager's salary to June 15, 1915, said organization and office expenses, including general manager's salary to June 15, 1915, not to exceed the sum of $8,797.13."

It is hereby further ordered that this Commission's order dated July 23, 1913 (Decision No. 808), and the supplemental orders amending the same, shall remain in full force and effect except as the same are modified by this third supplemental order.

Dated at San Francisco, California, this 28th day of September, 1915.

DECISION No. 2787.

IN THE MATTER OF THE APPLICATION OF FRANK GRIMM FOR AN ORDER AUTHORIZING THE SALE OF PROPERTY TO ANTELOPE CREEK AND RED BLUFF WATER COMPANY.

Application No. 1879.

Decided September 30, 1915.

Frank Grimm applies jointly with the Antelope Creek and Red Bluff Water Company for permission to transfer to the latter named company his water distributing system, serving what is known as the Sunnyside Addition to the

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city of Red Bluff for a consideration of $600.00, and it appearing that the consumers on this system will receive improved service through such transfer, application granted.

Elliott McAllister, for Applicant.

REPORT OF THE COMMISSION.

This is an application by Frank Grimm, the owner of a water plant located in Sunnyside Addition to the city of Red Bluff, for authority to sell the distributing system of pipes connected therewith to the Antelope Creek and Red Bluff Water Company, a company engaged in furnishing water for domestic purposes to the citizens of Red Bluff in general. The company joins in the application.

At the hearing held in Red Bluff on September 25th, testimony was presented showing that the plant now owned by Mr. Grimm was constructed about fourteen years ago and is now supplying water in Sunnyside Addition to thirty-two consumers; that the system was bought by him in January, 1915, from the estate of J. C. Hammans at administrator's sale, together with sixteen lots remaining unsold in said Sunnyside Addition, for the lump sum of $1,590.00. The water system was not purchased or valued separately. Mr. Grimm considers the lot on which the well is located to be worth $400.00 and the remaining lots worth $75.00 each.

If Mr. Grimm's system were to be continued it would be necessary to soon replace the 20,000 gallon capacity tank with one of a capacity of 50,000 gallons at a cost of $700.00, the increased size being installed to meet probable future growth of the neighborhood.

Antelope Creek and Red Bluff Water Company, in considering the price to be paid for the distributing system, considers that the increased business to be secured, with the value of the service connections, is worth to it $150.00 to $200.00; the pipe is sufficiently large to supply the service and shows no physical depreciation, so far as found upon slight investigation. No evidence was offered tending to show the value or cost of pipe or the labor of installing it, and the evidence shows that these elements were not known. The question of value of the distributing system has been submitted to the Commission's engineers and they offer no objection to the purchase and sale on that ground.

The company has been engaged for a great many years in the business of selling water for domestic purposes to the inhabitants of Red Bluff. Its supply is derived from Antelope Creek at a point about nine miles east of Red Bluff, from which point it is carried in a pipe line to two storage tanks located on a slight eminence at about the elevation of the highest point in Sunnyside Addition.

The amount of the gravity supply is 36,000 gallons per hour. This supply is supplemented by wells, from which an electric pumping

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plant furnishes 60,000 gallons per hour. The company also has a steam emergency plant, capable of supplying 50,000 gallons per hour additional. It is able to furnish ample water to all consumers in Sunnyside Addition of a quality equal to that they now receive.

The company has been receiving some complaints from users because of insufficient pressure, and it plans to raise the level of the water in its tanks some twelve feet, either by elevating the tanks or by increasing their height. It expects to do this before attempting to serve customers in Sunnyside Addition. A physical connection has been made with Mr. Grimm's system of distributing pipes and a test made to determine the pressure in Sunnyside Addition which would result from service through the present system of the company. This test shows that the pressure in Sunnyside Addition would be lessened in every instance, and three services would be unable to procure water. Of the thirty-two patrons of the Grimm system, twenty-three (all who were seen) petitioned the company to acquire and operate the system, hoping thereby to secure added water pressure.

The low pressure which the company is experiencing appears to result largely from the waste of water, Mr. Otto Von Geldern, the company's engineer, having submitted to it a detailed report showing that about one-third of the water passing through its system is wasted. The company contemplates action which it hopes will materially reduce, or entirely eliminate, this element of waste.

The pipe carrying the gravity flow from Antelope Creek crosses the Sacramento River upon the county bridge. The county is preparing to build a new bridge and to replace the abutments in such manner that it will be necessary for the company to move the location of about 1,000 feet of its pipe at a point near the approach to the bridge. This work, together with the raising of the tanks to improve the pressure, will require the expenditure of considerable sums of money in addition to the $600.00 required for the purchase of Mr. Grimm's distributing system. While the company is prepared to finance the present purchase, it is not prepared, without borrowing, to finance the moving of the pipe and the improvement on the tanks. It expects to later ask authority of this Commission to incur such indebtedness.

It appears to be for the public interest that the purchase and sale in question be authorized, provided the water pressure of consumers in Sunnyside Addition is not reduced.

ORDER.

Frank Grimm and Antelope Creek and Red Bluff Water Company having applied to the Railroad Commission for an order authorizing the sale and purchase of a distributing system of water pipes, consisting of 700 feet of four-inch pipe, 1,800 feet of three-inch pipe and 800

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feet of two-inch pipe, laid and used in Sunnyside Addition to the city of Red Bluff, and a hearing having been had upon said application,

It is hereby ordered that Frank Grimm be and he is hereby authorized to sell and Antelope Creek and Red Bluff Water Company be and it is hereby authorized to purchase said distributing system for the sum of $600.00.

This order is made upon the following conditions, and not otherwise, to wit:

1. The purchase price is not to be considered, before this Commission or any other public authority, as representing for rate fixing or purposes other than this application, the actual value of the property.

2. Said distributing system shall not be used by Antelope Creek and Red Bluff Water Company, or in connection with the water system now operated by it, until provision be made to maintain the water pressure at services throughout Sunnyside Addition to Red Bluff at least equal to that now furnished at said points.

3. The authority hereby given must be exercised on or before January 1, 1916.

4. Applicants shall report to this Commission within ten days after consummating said purchase the fact that it has been consummated and that said purchase price has been paid.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2788.

IN THE MATTER OF THE APPLICATION OF ECONOMIC GAS COMPANY FOR AN ORDER APPROVING AN ISSUE OF BONDS OF SAID CORPORATION OF THE FACE VALUE OF NINE HUNDRED THIRTY THOUSAND DOLLARS.

Application No. 500.

Decided September 30, 1915.

Under a plan of reorganization heretofore approved by the Commission, applicant was directed to issue, under direction of its stockholders, 1,255 shares of its preferred stock, which had been deposited in its treasury, for the purposes of paying off certain floating indebtedness. It subsequently appeared that 268 shares of this stock had been unintentionally issued prior to the issuance by the Commission of the necessary authorization. Applicant accordingly applies for an order legalizing the issuance of such stock, and it is herein granted permission to issue 268 shares of its preferred stock in lieu of the shares heretofore issued.

Chickering & Gregory, and *Winfield Dorn,* for Applicant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

THIRD SUPPLEMENTAL OPINION.

Heretofore, on May 5, 1915, this Commission issued a second supplemental order (Decision No. 2355) in the above entitled matter, modifying the terms of its first supplemental order (Decision No. 1238) of January 30, 1914.

By said modification the Economic Gas Company was authorized to issue $122,500.00 par value of its preferred stock and to place the same with L. P. Lowe, S. Waldo Coleman, and C. W. Conlisk, as trustees, to be sold as the stockholders of the said company should direct, but in no event to be sold for less than $80.00 per share. Such authorization was granted by this Commission on the condition that the proceeds derived from the sale of said stock should be used to pay floating indebtedness of the company or for additions and betterments to its property.

The stock above referred to was stock which had been surrendered to the trustees above named by stockholders of the applicant as part of the plan of reorganization of the applicant, approved by the first supplemental order of this Commission.

It now appears that prior to the authorization to issue said stock contained in the said first supplemental order, the trustees above named had used and applied 268 shares of said stock, of the par value of $26,800.00, for the benefit of the corporation and the satisfaction of certain floating indebtedness.

It further appears that the said stock was applied at its par value upon the said floating indebtedness and that the same was done with the consent and approval of the stockholders of the corporation and in furtherance of the plan of reorganization heretofore approved by this Commission.

It also appears that the use of said stock for the satisfaction of floating indebtedness was made under a misapprehension on the part of the trustees, the applicant, and the stockholders; that no specific authority was necessary or required from this Commission for the issuance thereof.

Economic Gas Company now petitions this Commission to approve the said issue of 268 shares of its preferred stock and the use, as aforesaid, of the proceeds from the sale of said stock. The applicant has now made a showing that the issue of said 268 shares would be within the authority subsequently given by the second supplemental order of this Commission, and I so find.

Inasmuch, however, as at the time of the use of said stock as aforesaid, this Commission had not given specific authority for the issue of

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the same nor prescribed the conditions upon which it might be used by the trustees for the benefit of the corporation, a supplemental order will be required and I therefore submit the following form of order:

THIRD SUPPLEMENTAL ORDER.

Economic Gas Company having applied to this Commission for authority to issue 268 shares of preferred stock, as specified in the foregoing opinion, and a hearing having been held and it appearing that the applicant has heretofore issued, without authority from this Commission, 268 shares of its preferred stock, for a purpose subsequently approved by this Commission in its supplemental order and in compliance with conditions therein imposed by this Commission, and that the issue of said stock was made prior to the authorization by this Commission,

It is hereby ordered that Economic Gas Company be granted authority and it is hereby granted authority to issue 268 shares of preferred stock; said 268 shares of preferred stock to be issued upon the recall and cancellation of 268 shares of said preferred stock heretofore sold by this applicant at par, as specified in the foregoing opinion.

The 268 shares of preferred stock herein authorized to be issued shall be deemed to be a part of the 1,255 shares of preferred stock of this applicant heretofore authorized to be issued by this Commission in its first supplemental order and second supplemental order in the above entitled matter.

The 268 shares of preferred stock herein authorized to be issued shall be in consideration for the surrender and cancellation of the certificates representing the unauthorized issuance of the same number of shares in December, 1913, and shall be in lieu thereof.

The foregoing third supplemental opinion and order are hereby approved and ordered filed as the third supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2789.

IN THE MATTER OF THE APPLICATION OF ETNA DEVELOPMENT COMPANY FOR AN ORDER AUTHORIZING INCREASE IN THE RATES FOR WATER IN ETNA, SISKIYOU COUNTY.

Application No. 1868.

Decided September 30, 1915.

Applicant aplies for permission to increase rates for water in the town of Etna, approximately 100 per cent, and an investigation showing that the present deficiency in the company's income is caused primarily by unnecessarily large

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amounts paid officials and directors of the company, and is also due largely to applicant's lax methods of collection, that it can not expect consumers who do pay their bills to bear a increase in rates for the purpose of compensating the company for losses occasioned through negligence and poor management.

Held, That the present schedule of applicant provides an adequate return, though certain small adjustments are necessary to establish different consumers on a more equal basis, these changes to provide a charge of 50 cents per month per fire hydrant, the city at present receiving such service gratis. Revised schedule established to become effective within thirty days.

R. S. Taylor, for Applicant.

B. K. Collier, for town of Etna, Protestant.

REPORT OF THE COMMISSION.

This is an application on behalf of Etna Development Company, hereinafter referred to as the water company, for an order authorizing the doubling of the rates under which it is at present furnishing water to the inhabitants of the town of Etna, Siskiyou County. The present rates were established by a recent ordinance of the town of Etna, but they are not materially lower than the rates which the company had been charging for a number of years previously.

The water supplying the town of Etna is obtained from Etna Creek, some distance above the town, by means of an open ditch extending approximately two and three-quarters miles to a point where it is discharged into a short transmission main which in turn connects with the distribution system. The town is entirely supplied by gravity, and the intake is at such an elevation that it provides a good pressure for the consumers. The system is entirely unmetered, but as there is ordinarily a plentiful supply of water there is no need under present conditions of incurring the expense of installing meters. The transmission and distribution system, made up largely of riveted steel pipe installed in 1896, is in very bad condition at present and the major portion of it should be replaced in the near future, as its condition is such that the cost of maintenance is excessive.

Mr. C. H. Loveland, one of the Commission's hydraulic engineers, submitted in evidence an estimate of the cost new of the physical property of the plant and also its depreciated reproduction value. He also submitted an estimate of the cost to the water company of its water rights now used and useful in serving consumers. These water rights were purchased by the water company in conjunction with real estate, buildings, machinery and ditches at a total cost of $11,500.00. The water company has from time to time sold various portions of the physical property so purchased for a total sum of $6,580.00. It still owns real estate, valued by Mr. J. P. Baker, the president and manager of the water company, at $800.00, which real estate is not used as part of applicant's water system. There was also included in these purchases of water rights two old ditches, at least one of which is not

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now used. Subtracting from the said sum of $11,500.00 the proceeds of the sales above referred to and the estimated value of real estate and ditches retained by applicant but not used in its present system, we have left the sum of $3,000.00, representing the net cost to the company of its present water rights.

Mr. Loveland's appraisal of the estimated cost new of the physical property of the plant, which includes overhead charges, which appraisal in our opinion is liberal to the water company, is $19,251.00. To this amount should be added the sum of $3,000.00 for water rights. The books of the company show that expenditures for maintenance and operation, for the years 1909 to 1913, inclusive, averaged $1,649.20, while the expenditures under this heading for the year 1914 were $2,335.00. The increase in expenditures for 1914 over the other years is largely due to the condition of the mains which, as above stated, are in very bad shape and require an unusually large expenditure for repairs. It was also due in part to the expense of preventing the mains from freezing in winter, but as they have been packed during the past few months this last mentioned expense should in the future be greatly reduced. Moreover, we find several other operating items altogether too high. For instance, this water company which is supplying a town of only a few hundred inhabitants and has only one hundred and sixty-five customers, is employing a manager at a salary of $900.00 a year, a secretary, who does the bookkeeping, at a salary of $100.00 a year, and a collector on a percentage basis who receives approximately $90.00 a year. The evidence clearly showed that the manager's duties left him enough spare time to enable him to keep the books and do all the collecting, and we believe that for a plant of this size all of these services should not cost the company more than a total of $900.00 per year.

Another item which should be reduced is the money spent for directors meetings. The company has a board of seven directors who hold monthly meetings for which each director present receives a fee of $4.00 per meeting. This amounted during the year 1914 to approximately 10 per cent of the company's total cash receipts. We believe that, considering the size of the water company's plant, it should not spend more than $56.00 per year for directors meetings, and we would suggest that it change its by-laws by reducing either the number of directors meetings or the fees received by the directors so that the total of such fees in the future shall not exceed the amount above mentioned.

If the present pipe system is replaced and the operating expenses are reduced as above suggested, we believe that the necessary cost of maintenance and operation should not exceed $1,650.00 per year. The actual cash income of the water company for the years 1911, 1912 and 1913 averaged $3,994.33. For the year 1914 it was $3,016.00. These

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figures represent the actual amount of money collected each year for services rendered.

Mr. J. A. Denny, secretary of the company, testified at the hearing that the number of consumers served by applicant's system has not decreased materially since 1911, and it also appeared from his testimony and from that of Mr. J. B. Baker, president of the company, and Dr. E. W. Bathhurst, chairman of the board of trustees, that the rates have not been materially changed during this time. From this and other evidence at the hearing we must conclude that the only reason for such a serious falling off in revenue was the failure on the water company's part to collect a large portion of the amount due it from consumers for water supplied during the year 1914; and we can not, of course, permit the company to charge its consumers who have paid their bills an increased rate because of its failure to use due diligence in making its collections.

From the evidence submitted we estimate that the annual income for the company upon the present rates and the rates hereinafter established by the order of this Commission will be approximately $3,800.00.

Allowing the company 8 per cent interest upon the estimated cost new of its plant and computing the depreciation by the sinking fund method we estimate the annual charges as follows:

Interest on $22,251.00 at 8 per cent	$1,780 00
Maintenance and operation	1,650 00
Six per cent sinking fund annuity	319 00
Total	$3,749 00

From the foregoing it is evident that the board of trustees acted fairly toward the company in establishing the present rates and that the same are entirely adequate, but we feel that as the question of rates is now before this Commission it would be well to make a few slight changes in order to have the charges apportioned among the different consumers upon a somewhat more equitable basis.

The water company raised the point at the hearing that it ought to be allowed to make a special charge for each bathtub used by consumers. We thing this point is well taken and shall fix the rate for each bathtub in private residences at 10 cents per month. The company also urged that the rates for bathtubs, urinals and patent toilets in public places should be higher than for those in private residences. In this we are also in accord with the company and shall establish the rates for these fixtures in public places, including hotels, saloons and barber shops, at 25 cents per month for each fixture. It also appeared that the town of Etna is paying nothing for the rental of the twelve fire hydrants, and we find that the company is rendering a service to the town for which it should receive a reasonable payment, which we find under all

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of the circumstances of this case to be 50 cents per month per hydrant, with a minimum charge to the town of $50.00 per year.

We find, on the other hand, that certain reductions should be made in the existing rates; that the number of persons allowed to occupy a residence under the minimum rate should be increased to five, and that reductions should be made in the charges for private stables, additional horses and cows, and water for small power wheels.

During the hearing a question was raised as to the reasonableness of a rule of the water company prohibiting the irrigation of lawns and gardens by its consumers during certain hours. We consider such a rule proper in principle but find that the restriction covers a larger portion of the day than is necessary. We accordingly suggest that the water company amend this rule so as to prohibit such irrigation only during the following periods, namely, from 6 a. m. to 8 a. m., from 11 a. m. to 7 p. m., and from 5 p. m. to 7 p. m.

ORDER.

Etna Development Company having filed with this Commission an application for an order doubling the existing rates for water furnished to the inhabitants of the town of Etna, Siskiyou County, and the town of Etna having appeared and protested against any increase in the rates, and a public hearing having been held and evidence having been introduced by both the applicant and the protestant, and the Commission being fully advised in the premises, we hereby find as a fact:

(1) That a slight readjustment of the rates resulting in the schedule of rates hereinafter specified would distribute the charges among the consumers upon a more equitable basis than at present.

(2) That the rates herein established are just and reasonable.

Basing our conclusions upon the foregoing findings of fact and upon the further findings of fact contained in the opinion which precedes this order,

It is hereby ordered that Etna Development Company, within thirty (30) days from the date of service on it of a copy of this opinion and order, publish and file with this Commission, and thereafter charge and collect from its customers in the town of Etna and the territory adjacent thereto served by said company, the following rates:

1. For houses occupied by not more than five persons, per month, $1.00.
   For each additional person over five years of age, per month, 10 cents.
2. For each lodging or apartment house of fifteen rooms or less, per month, $2.50; for each additional room, per month, 10 cents; for restaurant or dining-room in connection therewith, per month, $1.75; for each barroom in connection, per month, $1.90.
3. For each restaurant, per month, $1.75.
4. For each saloon, per month, $1.90.
5. For small stores and shops, per month, $1.00.
6. For large stores, per month, $1.85.

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7. For patent toilet or bathtubs in private residence, per month, 10 cents; for urinals, bathtubs, patent toilet, either public or in hotels, saloons, or barber shops, per month, 25 cents.
8. For barber shops where one chair is used, per month, $1.25; for each additional chair, per month, 25 cents.
9. For drug stores, per month, $1.00.
10. For blacksmith shops for cooling tires, per month, 65 cents.
11. For livery stables, including water for washing vehicles, per month, $6.00; private stables for one horse or cow, including water for washing vehicles, per month, 25 cents; for each additional horse or cow, per month, 10 cents; provided that where stables are irregularly used the rate of payment shall be computed upon the average monthly use of same at the rate per head, per month, 10 cents.
12. For soda fountains, per month, 50 cents.
13. For water used to generate power where less than one horsepower is generated, 50 cents per month.
14. For breweries, bottling works, and power used in connection therewith, including house used on brewery premises, per month, $20.00.
15. For any occupation not heretofore mentioned that would rate less than minimum house rate, per month, 75 cents.
16. For all irrigation, the season for which shall be six months, for 1,000 square feet or less, 50 cents; for each additional 1,000 square feet or fraction thereof, per month, 10 cents.
17. For water used to generate power: For each horsepower so used up to five horsepower, per month, $2.00; all over five horsepower, for each horsepower, per month, $1.50.
18. Meter rates: 600 cubic feet or less, $1.00 per month, excess 10 cents per 100 cubic feet.
19. Fire hydrants rental, for each hydrant 50 cents per month, with the minimum charge of $50.00 per year.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2790.

CITY OF CORONA

vs.

CORONA HOME TELEPHONE AND TELEGRAPH COMPANY, CORONA UNION TELEPHONE AND TELEGRAPH COMPANY, PACIFIC TELEPHONE AND TELEGRAPH COMPANY, AND UNITED STATES LONG DISTANCE TELEPHONE AND TELEGRAPH COMPANY.

Case No. 660.

Decided September 30, 1915.

Complainant brings into question the rates, service, rules and regulations of defendant telephone companies, which complaint is subsequently amended to include only the Corona Home and the Corona Union Companies, the other two companies operating toll service lines only. After a review of defendant's property values and operating expenses, it appears that its present schedule of rates is not exorbitant but that there are a number of discriminatory charges which should be eliminated.

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Held, Schedule of rates which do not materially affect defendant's present income but which remove present discriminations, established to become effective November 1, 1915.

Held, That in establishing a value as a basis for fixing rates, when a utility purchases the properties and franchise of a competitive company, it can not claim a value for such franchise when it continues to operate under its own, and the purchased franchise is of no value to it.

G. R. Freeman, for Complainant.

W. S. Clayson, for Defendants.

REPORT OF THE COMMISSION.

GORDON, *Commissioner*.

This is a complaint brought by the City of Corona, Riverside County, California, calling into question the reasonableness of the rates, and of the rules, regulations and practices affecting rates in effect for telephone service in the city of Corona and in the territory served therefrom. As originally filed the complaint was directed against each of the above entitled defendants. The Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company, however, are found to be furnishing only long distance toll service between Corona and outside points, and as the rates for this class of service are not involved in the complaint the complainant later formally requested that the complaint as to these two defendants be dismissed. The Commission will accordingly consider the complaint only as directed against the other two defendants, Corona Home Telephone and Telegraph Company and Corona Union Telephone and Telegraph Company. The complaint also alleges that the service is inadequate in certain respects, but the chief issue goes to the reasonableness of the rates, and as no testimony was offered bearing upon the alleged inadequacy of the service the complaint will be considered only with reference to the other issue involving the reasonableness of the rates.

The complaint was filed with the Commission on August 20, 1914, and after a number of delays and postponements was heard in the city of Corona on March 19, 1915.

The Corona Home Telephone and Telegraph Company was organized on December 6, 1905, and constructed the system now operated by the Corona Union Telephone and Telegraph Company. At the time this system was built and placed in operation by the Corona Home Telephone and Telegraph Company, the Sunset Telephone and Telegraph Company also operated a telephone system in Corona, the two systems thereafter being operated as competitive systems until the subsequent sale of the Sunset local system. The Sunset Telephone and Telegraph Company, now known as the Pacific Telephone and Telegraph Company, then owned and operated a system of long distance toll lines to

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which its Corona exchange had access for long distance service to its other exchanges throughout the State of California. The United States Long Distance Telephone and Telegraph Company also owned a system of long distance toll lines throughout the southern part of the State in competition with the Sunset Company's long distance lines, providing long distance connections generally for the so-called Home companies throughout its field of operations. The Corona Home Telephone and Telegraph Company was provided long distance toll service over the lines of the United States company under a written agreement, the terms of which provided that the Corona company should not connect its system with the toll lines of any other long distance company in competition with the lines of the United States Company. In due course, negotiations were started looking to the purchase of the Sunset company's system in Corona, to complete which and to enable it to secure connection with the long distance toll system of the Sunset company, the Corona Union Telephone and Telegraph Company was organized on March 27, 1909. This new company then took over and has since been operating the combined systems under lease from the Corona Home Telephone and Telegraph Company. Throughout the following discussion reference will, therefore, be made to the operating company.

During the month of April, 1914, the city of Corona by vote of its citizens transferred jurisdiction over its public utilities to the Railroad Commission. Prior to that time, the rates for telephone service had been fixed by ordinance. These rates, as shown by the company's rate schedule on file with the Commission, are as follows:

	Business.	*Residence.*
1 party, per month	$3 50	$2 50
2 party, per month	----	2 00
4 party, per month	2 50	1 50
8 party, per month	1 50	1 50

Country lines, $2.00, $2.50 and $3.00 per month.
Ministers and firemen, $1.00 per month.
Lodges, $2.00 per month.
Desk or portable telephones, 25 cents additional to above.

The testimony shows that the ordinance rates were made to apply throughout the incorporated limits of the city. These limits extend to considerably greater distances in some directions than in others and as a result the defendant has been required to extend its service to greater distance in some cases than in others at similar rates. In order to properly protect the company and at the same time to afford its patrons similar service at similar rates, a definite radius should be provided within which uniform rates and practices should apply without discrimination. The defendant has also filed with the Commission certain statements and data, an examination of which discloses the exist-

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ence of considerable discrimination in present rates outside of the city limits. Such discrimination whether within or beyond the city limits should be removed, and for reasons which will presently appear the Commission will concern itself chiefly with their removal.

This defendant has submitted statements to the Commission necessary in the consideration of this case, including statements of its receipts and expenditures, classification of its subscribers and rates, and an inventory and appraisal of its plant and property. Its annual report for the year 1914 indicates a net income of $5,786.83 for that year. Its total investment, according to the company's appraisal, is $62,851.97. On this valuation, a net income of $5,786.83 would represent a net return of 9.2 per cent, but neither the annual statement nor the company's valuations appear to properly represent the company's operations. In order, therefore, to enable the Commission to determine the facts, further statements bearing upon the company's receipts and expenditures have been required and have been considered in detail both by the Commission and by the defendant, with the result that the defendant has agreed to certain corrections in the original statements appearing as follows:

Total operating expenses charged as per annual statement for 1914		$8,528 82
Less deductions for items chargeable to capital account, but charged to operation	$1,142 90	
Errors in additions	38 77	
Items which can not be accounted for	6 50	
Total deduction		1,183 17
Balance gross operating expense, 1914		$7,345 65

Although the privilege of presenting briefs was not requested at the hearing, counsel for the defendant has presented a brief in which the claim is advanced that the defendant's annual statement, in reporting expenses of operation, includes nothing for depreciation of plant, and that approximately $2,000.00 should have been charged to this item. It is a fact that this statement does not show a charge to depreciation as such, but the testimony which is of record in this case shows that the item of depreciation has been taken care of at least in part and has actually been charged to operating expense under maintenance of plant. It would seem then that the thing to do now is to determine as nearly as the company's records will permit what amount has actually been charged in this way, and, if sufficient has not already been charged, to allow whatever additional amount may be proper to make up the difference. It is, of course, apparent that separate accounts for maintenance and depreciation of plant should be maintained, and that a reserve sufficient to care for the future depreciation of plant should be maintained, and that a reserve sufficient to care for the future deprecia-

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tion of plant should be provided, but fairness to the company demands that a determination of what it is capable of earning through present rates shall give due consideration to what it should set aside out of its gross earnings to provide for this account regardless of the fact that it has not done so heretofore. It is now difficult to determine accurately what amount has been charged to maintenance that should properly have been charged to depreciation, due to the fact that the defendant's accounts have not been so kept in the past as to show the two accounts separately, but from such information as has been furnished the Commission it is possible to estimate with reasonable accuracy to what additional amount the defendant may be reasonably entitled for depreciation.

This defendant has heretofore filed with the Commission its annual reports for the years ending December 31, 1912, 1913, and 1914, showing total operating expenses for each of these years as follows:

For the year 1912	$7,849 50
For the year 1913	7,874 31
For the year 1914	8,528 82

Subsequent to the filing of this complaint, the Commission called upon the complainant for further statements showing in detail, which the annual statements do not show, how the total maintenance expenses included in the above have been made up. These detailed statements show total operating expenses for 1912 and 1913, inclusive of maintenance and depreciation, comparatively close to the amounts reported in the annual reports for the same years. By comparison the figures are as follows:

	Annual report.	*Statement.*
1912	$7,849 50	$7,308 49
1913	7,874 31	7,973 17

The detailed statements for each of these years show that depreciation to the amount of $2,006.04 per year has been charged. The detailed statement for 1914 covers only the first six months of the year, and shows the total maintenance expense for six months, exclusive of $1,003.02 charged to depreciation, as follows:

Superintendence and repairs of plant	$1,242 34
Repairs of equipment, buildings and grounds	743 29
Total maintenance expense for six months	$1,985 63

If the total maintenance expense for the year were twice the amount of this expense for six months, the total annual cost would be $3,971.26, but the amount of this item, as shown by the company's annual report, is $4,778.74. If, therefore, the defendant's testimony to the effect that depreciation which has taken place has been taken care of out of maintenance expense is dependable, and if the detailed statements which have been presented are also dependable, it is evident that the annual

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report, which the defendant's counsel in the brief previously referred to claims does not provide anything for depreciation, does in reality charge to maintenance expense an amount equal to the difference between the two amounts mentioned above, or $807.48, which is properly chargeable to depreciation. The fact that the totals charged to maintenance expense, as shown by the annual reports for 1912 and 1913, neither one of which shows a separate charge to depreciation as such, correspond so closely to the total charges to both maintenance and depreciation as shown by the detailed statements for those years, further support this conclusion. It appears reasonable then that in determining the total amount properly chargeable under operating expenses to depreciation this amount, $807.48, should be considered.

In other telephone cases which have been before this Commission, from 5 per cent to 5½ per cent has been allowed to be set aside out of earnings as a reasonable charge to depreciation in addition to ordinary maintenance charges. In this case, 5½ per cent may be considered reasonable and will be allowed for depreciation in estimating the probable operating expenses of this company for the year 1915. It will be seen from a summary of the Commission's valuation of this plant which will presently follow that the amount of plant against which this charge should apply is $34,664.27. Depreciation at 5½ per cent would thus amount to $1,906.53. The difference between this figure and the amount already actually charged, as shown above, viz, $807.48, and to which this company is properly entitled in addition is, therefore, $1,099.05.

The testimony in this case further shows that certain services have been rendered the company by its officers for which no charge whatever has been made heretofore. It is, of course, apparent that had the company been obliged to employ outside help to perform these services it would have been necessary to meet the expense out of revenues, and fairness demands that a reasonable amount be allowed in the future for this expense. It appears that $1,200.00 per year would be a reasonable allowance for this purpose and I am willing to recommend that this amount be allowed as an additional operating charge.

Assuming that the total operating expenses for the year 1915 will be approximately what they were during the previous year, the estimated total expenses, after taking into consideration the corrections and additions referred to above, would appear to be as follows:

Total operating expenses shown by annual report for year 1914	$8,528 82
Less deductions previously referred to	1,183 17
Total	$7,345 65
Additional allowance to depreciation	1,099 05
Additional allowance for salaries	1,200 00
Total estimated operating expenses, 1915	$9,644 70

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The gross receipts for 1914, as shown by the annual report, were $15,199.86. The net income, after taking away operating expenses, $9,644.70, and taxes assignable to operations, also shown by this annual report to be $884.21, would be $4,670.95, and based upon the company's investment figures, would represent a net return of 7.43 per cent. As previously stated, however, the company's investment figures are based upon valuations which are not satisfactory to the Commission. These figures are as follows:

Plant	$11,861 35
Equipment	8,600 16
Labor on plant, poles, lines, telephones, etc.	16,507 24
Labor installing switchboards, etc.	1,500 00
Building and lot	5,000 00
Contractor's profit on labor and material	7,343 60
Engineering and attorney's fees	1,500 00
Interest during construction, 6 per cent on $50,000.00 for one year	3,000 00
Working capital	1,000 00
Employees' liability on labor, $18,007.24 at $5.55 per $100.00	999 40
Public liability on labor, $18,007.24 at $3.00 per $100.00	540 22
Cost of Pacific franchise	5,000 00
Total	$62,851 97

In order to enable the Commission to pass upon the valuation claimed by the defendant, it called for an itemized inventory and appraisal of the defendant's property. This inventory and appraisal has been provided and carefully analyzed by the Commission's telephone engineers to determine what a fair reproduction value of the plant would be as of the date of the inventory, and the Commission's findings were presented in evidence at the hearing. It appears from the testimony of witnesses for the defendant that the inventory and appraisal was made up by employees of the company who are admittedly not engineers and have had no experience in appraising telephone property, and aside from their unfamiliarity with the values of such property, certain items have been included which obviously do not have a proper place in the company's valuation of this system. Particular attention is directed to the following items which were included in the company's inventory:

Building and lot	$5,000 00
Cost of franchise	5,000 00
Contractor's profit	7,343 60

With reference to the appraisal valuation of the building and lot, the city clerk and ex officio city assessor testified that the building is assessed by the city at $800.00 and the lot at $1,400.00, the assessment being fixed at approximately 50 per cent of the actual present market value of the property. This would fix the actual present market value of this property at $4,400.00.

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With reference to the appraisal value of franchise, $5,000.00, the defendant contends that this is the actual amount which it paid the Sunset Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company for a franchise under which the Sunset and the Pacific companies formerly operated in Corona, and which it acquired when it took over the system which they operated and that, therefore, this amount should be allowed as a part of its present investment. In support of this contention, the defendant attaches particular importance to a certain provision contained in a written agreement which was entered into between it and the companies when it purchased their Corona property. This provision appears in the following clause in that agreement:

> "It is finally agreed that the said Corona company shall, during the life of this agreement, have the right to carry on its business in the said city of Corona under the franchise or franchises now held by the said Pacific company and Sunset company, or either of them, to carry on a telephone or telegraph business in the said city of Corona or in the said county of Riverside, and that the said Pacific company and Sunset company will grant to said Corona company such lease or assignment of its rights and franchises aforesaid, as will accomplish the purpose hereinabefore expressed."

The facts of the matter are, however, as the testimony shows, that before the defendant acquired the Sunset and Pacific property and franchise, the Corona Home Telephone and Telegraph Company, whose system is now being operated by the Corona Union Telephone and Telegraph Company under a lease from the Corona Home company, was granted a franchise by the city of Corona and that the Corona Union company is still operating under this franchise. It is also a fact that the agreement above referred to contains a further clause reading as follows:

> "The Corona company agrees to pay to the Pacific company in consideration for the exchange plant of the Pacific company in said city of Corona and other property hereinbefore agreed by it to be sold to said Corona company, the sum of five thousand dollars ($5,000) in first mortgage 5 per cent gold bonds of the Corona Home Telephone and Telegraph Company of the issue already authorized."

There is also attached to this agreement a list of the physical property that was sold under it. It is also a fact, as shown by the record, that previous to the purchase of this physical property from the Sunset and Pacific companies they were operating a telephone system in Corona as competitors of the defendant company, and as a result of the purchase the defendant was relieved of competition. Thus, while it is a fact that the franchise rights under which the former owners of this

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property operated were included in the transfer, it is quite evident in view of the fact that the purchasers were at the time and still are operating under a previous franchise, that the Sunset and Pacific franchise as such possessed no particular monetary value to the defendant. Under the circumstances, I can not agree to admitting it as constituting part of the value of the defendant's present property. As to the value of any physical property which was acquired by this transfer, credit will be allowed for such portions of it, if any, as may be in use when fixing a value of the operative property since the inventory contains a list of all of the property actually in use at this time.

With reference to the item "Contractor's Profit, $7,343.60," the defendant assumes that a fair valuation of this property can best be determined by showing what it would cost to reproduce it. Defendant assumes that a plant of this size and character would be built by contract and urges that $7,343.60 would be the amount which the contractor would be entitled to earn as his profit for the actual work of construction. The amount assumed is presumed to be 20 per cent of the actual cost of material and labor involved in its construction. If it were necessary to build the plant by contract, it is, of course, obvious that whatever profit the contractor might charge would enter into the cost of the completed plant as a proper overhead charge, but this is only an assumed condition which has been set up for the reason that the defendant claims that it is not in a position to show what the plant has actually cost the company. If, therefore, it is necessary and proper under the circumstances that a reproduction cost basis be taken as the basis upon which to determine the present fair value of this property, the application of fair present unit costs as they are now known to exist to the various items of plant involved, with the addition of reasonable and fair overhead charges, will properly take care of such items as the one referred to and will adequately protect both the company and the public. This item of contractor's profit as such will, therefore, be excluded from the Commission's appraisal.

In addition to the three items which have just been discussed, it will be noted that the defendant includes two others, viz, engineering and attorney's fees, $1,500.00, and interest during construction at 6 per cent on $50,000.00 for one year, $3,000.00. It is apparent, of course, that before actual construction may be started, engineering and other preliminary preparations must be made, the cost of which should be considered. Such costs are ordinarily provided for under cost of organization and are considered in the Commission's appraisal. It is not reasonable, however, to assume that in the construction of a telephone plant of the extent of that involved in this case, viz, one having approximately 650 working telephones, a year's time will intervene before any of the plant is placed in operation and earning on the money invested,

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or that interest should be allowed for any time on $50,000.00 since it appears after liberally allowing for present values that the total value of the operative physical plant is considerably less than this amount. To grant that a year would be required to complete a plant having but 650 telephones in service would be to admit that an installation on an average of less than two telephones per day would be a reasonable ratio for the construction of exchanges of this class. From the evidence which was presented, it seems that an allowance of $1,000.00 for interest is all that the complainant can reasonably claim and I shall recommend that not more than this amount be allowed.

Referring now to the Commission's valuation of the defendant's property, what the estimated net income will be for the year 1915, what the net income represents in the way of an earning on this valuation, and to the procedure to be followed in the way of such rate revision as may be necessary to eliminate the existing discrimination.

Basing unit costs upon present average costs of labor, material and incidental items, and allowing overhead and other costs as indicated, the cost of reproducing this plant new as of the date of the defendant's inventory, without deducting anything for depreciated value, and except that where present standard methods of construction do not appear to have been employed, the defendant's valuations have not been altered, would be as follows:

Pole lines	$13,035 06	
Aerial and underground cable	1,518 97	
Underground conduit	55 00	
Aerial wire	10,189 24	
Subscribers' station equipment	4,991 30	
Central office	2,694 00	
Central office building	1,600 00	
Office furniture and fixtures	254 50	
Tools, teams and vehicles	326 20	
		$34,664 27
Real estate	$2,800 00	
Material and supplies	220 76	
Right of way	40 00	
Organization	1,500 00	
Interest during construction	1,000 00	
Working capital	1,000 00	
Overhead charges including engineering, supervision, supply and tool expense, etc., 15 per cent of physical plant, $34,664.27	5,199 64	
Employees' and public liability	1,452 70	
		13,213 10
Total		$47,877 37

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I have previously shown that on the basis of the receipts reported by the defendant in its annual report for the year 1914, the estimated net income for the year 1915 after deducting the estimated gross operating expenses would be $4,670.95. Upon this basis, the defendant would be earning 9.75 per cent upon the Commission's valuation of this property. At the hearing of this case, the defendant testified that the capacity of the present plant will not admit of taking care of any additional demands for telephones, and that it will be necessary at once to provide additional facilities which will require an estimated expenditure of approximately $4,700.00. With the addition of this amount to the present investment, the net return would be reduced to approximately 8.88 per cent. The public can not reasonably demand rates so low that the defendant's income may be reduced to the point where there would not be a sufficient earning to enable it to provide for necessary facilities to take care of the public demand for service. For this reason, the Commission's chief concern at this time will be to bring about such revision or modification of present rates as will remove discriminations which now exist.

Reference has previously been made to the fact that the present rates have heretofore been required by ordinance to apply throughout the city regardless of the subscriber's location with reference to distance from the central office, and that as a result a condition has been developed which results in discrimination in the rates charged within the city as compared with those charged outside the city limits. Statements which the defendant has submitted to the Commission giving in detail classifications of present subscribers by classes of service and rates further show that discrimination also exists in other ways. In order to relieve this condition and to establish uniformity in the method of applying the rates, it is deemed advisable to establish a definite radius from the central office within the area of which similar rates shall be charged for similar service, and beyond which other uniform rates shall apply, based upon the distance beyond the established radius at which the subscriber may be located whether within or without the city boundary. In order not to unduly disturb the present arrangement for service within the city, an area within a radius of three miles from the company's central office may be established within which the present rates, with certain modifications designed primarily for uniformity and for the removal of discrimination, may apply. Beyond three miles from the central exchange, mileage charges may be added, varying according to the class of service selected, the uniform application of which will eliminate the numerous instances of discrimination now existing outside the boundaries of the city.

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The schedule of rates proposed to be applied within the three-mile radius, and the classes of service to be provided are as follows:

	Business service		Residence service	
	Wall set	Desk set	Wall set	Desk set
One-party, per month	$2 50	$2 75	$2 00	$2 25
Two-party, per month	2 25	2 50	1 75	2 00
Four-party, per month	2 00	2 25	1 50	1 75
Eight-party, per month	1 75	2 00	1 25	1 50

Mileage charges to be added to the above rates for either business or residence service located beyond the three-mile radius, the mileage charges to apply at the rates indicated for each mile or fraction of a mile beyond the three-mile radius.

One-party, 50 cents per month per mile or fraction.
Two-party, 35 cents per month per mile or fraction.
Four-party, 25 cents per month per mile or fraction.
Eight-party, 15 cents per month per mile or fraction.

The present rate schedule provides for special rates for firemen and clergymen and for lodges and clubs, which are lower than the rates paid by other classes of subscribers. It appears also from the company's classification of subscribers and rates previously referred to that a discount from schedule rates is allowed for telephones in use by the various departments of the municipal government. This classification also shows that a number of extension telephones are in use and being charged for at $1.00 for wall sets and $1.25 for desk sets, and that extension bells are also in use and being charged for at 25 cents per month, but for which the filed schedule does not provide rates. The schedule now in effect also provides rates of $2.00, $2.50 and $3.00 per month for what it classifies as "Country Lines."

The Public Utilities Act of this State provides that public utilities may under certain specified conditions grant free or reduced rates, and the decisions rendered by this Commission in Case No. 293, viz, Decision No. 421, rendered on January 24, 1913, and Decision No. 596, rendered on April 19, 1913, further specify certain cases in which public utilities, other than common carriers, may, if they so desire, charge less than their published rates. Decision No. 421, in Case No. 293, provides that the public utilities of this State, other than common carriers, may if they so desire grant free or reduced rate service in the following classes of cases:

1. Federal and state governments and the political subdivisions thereof, including the departments thereof, and public institutions.
2. Fairs and other public expositions and celebrations.
3. Charity, as defined in the opinion in this case.
4. Employees.

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Lodges, clubs and fraternal organizations were purposely omitted from the classes of cases in which free or reduced rates may be granted, and any free or reduced rates now in effect by this defendant in such cases should be discontinued.

In providing the above revised schedule of rates for this company, it is not intended that the company shall be required to alter or withdraw any of the reduced rates now in effect in the other cases above mentioned, but that it may if it so desires continue them, provided there shall be no violation of the provisions of the Public Utilities Act or of the Commission's orders here referred to; nor does it seem necessary at this time to require any change in the rates now in effect for extension telephones or extension bells, but with reference to the rates now charged for "Country Lines," they should be made to conform with this revised schedule.

The application of this revised schedule will result in increasing the present rates in a few instances and in reducing the present rates in others, but it will have the further effect, if uniformly applied, of removing discrimination. The net result will be a reduction of approximately $970.44 per year in the company's exchange service revenues if the classifications which the company has submitted are correct, and taking the Commission's valuation of this property as a basis will leave the company a net earning of approximately 7.55 per cent after allowing for the additional expenditures for improvement and for expenses of operation previously referred to. This result is shown in the following summary of the foregoing:

STATEMENT.

Showing Estimated Receipts and Expenditures of Corona Union Telephone and Telegraph Company During the Year 1915.

Through the application of revised rates for local exchange service as herein recommended, and based upon the company's classification of subscribers in service as of January 1, 1915, and upon the company's report for the year 1914, as herein modified, and

Showing Estimated Net Earnings Based Upon Cost of Reproducing the Plant New Without Deducting Depreciated Value.

Estimated exchange service revenues for 1915, based upon classification of subscribers in service January 1, 1915		$14,410 44
Less reductions resulting from the application of revised schedule of rates		970 44
Total		$13,440 00
Estimated toll service revenues based upon receipts during 1914, as shown by the company's annual report		817 65
Miscellaneous revenues, as per same report		245 25
Total		$14,502 90

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Estimated operating expenses for 1915, based upon annual report for the year 1914	$8,528 82	
Less corrections heretofore mentioned	1,183 17	
		$7,345 65
Plus additional allowance for salary expense	$1,200 00	
Additional allowance for annual depreciation	1,099 05	
		2,299 05
Total estimated operating expense 1915		$9,644 70
Net operating revenue		4,858 20
Less taxes assignable to operations		884 21
Balance net income		$3,973 99
Estimated cost to reproduce plant		$47,877 37
Expenditures for necesasry improvements		4,700 00
Total investment		$52,577 37

Return on investment, 7.55 per cent.

On an investment of $47,877.00, exclusive of expenditures for improvements, the net return would be 8.3 per cent, while the return on the company's own valuation figures exclusively of expenditures for improvements would be 6.32 per cent. After carefully considering all of the foregoing, and particularly in view of the necessity for removing the discrimination in rates which now exist, I am of the opinion that the schedule of revised rates herein proposed will constitute a reasonable schedule and shall recommend to the Commission that it be adopted with the understanding that if, having operated under it for a period of not less than one year, this defendant is of the opinion that the rates are insufficient to afford a reasonable return upon a reasonable investment, application may thereafter be made to the Commission for a modification of the order herein.

It should be distinctly understood that the conclusions herein reached are based on the specific facts of this case and that they will not necessarily be determinative in other cases.

The following order is recommended:

ORDER.

Formal complaint having been filed with this Commission by the City of Corona, a municipal corporation, complainant, calling into question the reasonableness of the rates of Corona Home Telephone and Telegraph Company, a corporation, and Corona Union Telephone and Telegraph Company, a corporation, defendants, for telephone service in and about the city of Corona, and asking that the Commission establish reasonable rates therefor, and a hearing having been held and being fully apprised in the premises, the Commission hereby finds as a fact:

1. That discrimination now is practiced in the rates charged patrons for telephone service in and about the city of Corona in violation of the provisions of the Public Utilities Act of this State.

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2. That such discrimination may be reasonably removed without unduly depriving the defendants herein of revenues to which they may be justly entitled by the uniform application of a revised schedule of rates as hereinafter provided.

And basing its conclusions on the foregoing findings of fact, and upon the further evidence considered in the preceding opinion,

It is hereby ordered that on or before the first day of November, 1915, the defendants herein shall publish, file with this Commission, and uniformly charge and collect the following monthly rates for telephone service in the city of Corona and in the territory served therefrom, which are found to be just and reasonable rates, viz:

	Business service		Residence service	
	Wall set	Desk set	Wall set	Desk set
One-party, per month	$2 50	$2 75	$2 00	$2 25
Two-party, per month	2 25	2 50	1 75	2 00
Four-party, per month	2 00	2 25	1 50	1 75
Eight-party, per month	1 75	2 00	1 25	1 50

The rates herein shall apply within a radius of three miles in any direction by air line from the central office switchboard. For either business or residence service located beyond the three-mile radius herein provided, mileage charges as indicated for the class of service selected may apply in addition to the above rates for each air-line mile or fraction thereof per month, as follows:

One-party, 50 cents per month per mile or fraction.
Two-party, 35 cents per month per mile or fraction.
Four-party, 25 cents per month per mile or fraction.
Eight-party, 15 cents per month per mile or fraction.

Provided that in those cases, if any, in which special or reduced rates, not in violation of the provisions of the Public Utilities Act of this State or of the orders of this Commission, which are lower than the rates herein provided for are in effect, such lower rates may continue in effect if the defendants herein desire to so continue them pending the further order of this Commission.

And provided further that the rates at present in effect for extension telephones and extension bells shall not be affected by the order herein.

And it is hereby further provided that this Commission's Decision No. 2689, in Case No. 683, so far as it is applicable in this case, is hereby made a part of the order herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

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DECISION No. 2791.

UNITED RAILROADS OF SAN FRANCISCO

vs.

PENINSULA RAPID TRANSIT COMPANY.

Case No. 835.

Decided September 30, 1915.

Complainant, operating an electric interurban line from San Francisco to San Mateo, files a complaint with the Commission petitioning that it declare defendant company, operating a line of auto busses between the same termini, a public utility, and it appearing that for reasons expressed in the Commission's decision in Case No. 827, this day rendered, that the Commission has no jurisdiction herein, complaint dismissed.

William Abbott, for Complainant.

J. E. McCurdy, for Defendant.

Hamilton A. Bauer, for San Mateo County Advancement League, Intervenor.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In this complaint, this Commission is asked by United Railroads of San Francisco to assume jurisdiction over Peninsula Rapid Transit Company. A public hearing was held in San Francisco on September 20, 1915. San Mateo County Advancement League was given permission to intervene and to present argument on the question of jurisdiction. The case is now ready for decision.

United Railroads of San Francisco is a California corporation which is engaged in the business of operating a street railroad within the city and county of San Francisco. The company also operates an interurban electric line from Fifth and Market streets, in San Francisco, partly on the public highways and partly over private rights of way through Daly City, Millbrae, Easton, and Burlingame, to the city of San Mateo.

Defendant is a California corporation which is engaged in the business of operating auto busses between a point near the intersection of Fifth and Market streets, in San Francisco, along the public streets and highways, following a course closely paralleling that of the United Railroads of San Francisco to San Mateo. The company charges a fare of 25 cents for the journey between San Francisco and San Mateo, with a graded schedule applying to intermediate points. Persons desiring to travel in defendant's auto busses are taken on at

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points intermediate between the termini, to the capacity of the auto busses. Defendant admits that it is a common carrier of persons to the capacity of its auto busses, between San Francisco and San Mateo, as the term "common carrier" is defined at common law and in section 2168 of the Civil Code, but denies that it is a "common carrier" as that term is defined in the Public Utilities Act, and denies that it is in any way subject to the jurisdiction of the Railroad Commission. Complainant asks that this Commission compel defendant to file its rates and charges, to secure a certificate of public convenience and necessity and to comply in all other respects with the provisions of the Public Utilities Act.

The arguments in favor of and against this Commission's jurisdiction over agencies such as the defendant herein have been fully set forth in this Commission's decision in Case No. 827, *Western Association of Short Line Railroads* vs. *E. M. Hackett et al.*, in which case the decision is this day being rendered. The only material difference in fact between the *Hackett* case and present case is that Hackett and his partner carry freight, while the defendant herein carries passengers. It will not be disputed that this difference in fact has no bearing on the question of this Commission's jurisdiction.

For the reasons which are fully set forth in the decision in Case No. 827, I am of the opinion that this Commission has no jurisdiction to entertain the present proceeding, and for that reason recommend that the same be dismissed.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the Railroad Commission finding that it does not have jurisdiction,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

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Decision No. 2792.

IN THE MATTER OF THE APPLICATION OF CRESCENT BOAT COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CAPITAL STOCK.

Application No. 1864.

Decided September 30, 1915.

Crescent Boat Company applies for permission to issue 74,997 shares of its capital stock of the par value of $1.00 per share in consideration for certain launches, wharves, etc., with which it proposes to engage in the passenger and freight carrying business on San Diego Bay. Application granted, provided that the stock consideration paid for such properties shall not be taken before this or any other rate fixing body as representing the value of these properties for rate fixing purposes.

Leovy & Leovy, for Applicant.

Report of the Commission.

This is an application by Crescent Boat Company for an order authorizing the issue of 74,997 shares of capital stock of the par or face value of $1.00 each for the acquisition of certain launches, wharves, piers, pavilions, appliances and equipment incident to the ferry and boating business formerly conducted by Point Loma Ferry Company and Messrs. Rand & Chandler.

At the hearing held in San Diego on September 20th, testimony was submitted showing that the Point Loma Ferry Company was organized some eight or nine years ago, and has since been engaged in business on San Diego Bay, operating excurision launches, carrying freight, and operating a ferry from San Diego to Roseville, Fort Rosecrans and other points on the Point Loma peninsula, under a franchise with about ten years still to run, authorizing the establishment of such a ferry upon San Diego Bay between a point near the foot of what is now Market street, in San Diego, and a point near the foot of Talbot street, in Roseville, the latter point being also within the corporate limits of San Diego.

The partnership of Rand & Chandler, composed of Charles W. Rand and Ralph J. Chandler, has more recently acquired the business and property of the McKinley Tours Company, including a number of launches and a franchise to operate a ferry across San Diego Bay from a point near the foot of Market street in San Diego to a point some nine or ten miles down the bay at South San Diego, all of which property it operated prior to the execution of the contract hereinafter referred to in the conduct of a business similar in character to that

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of Point Loma Ferry Company. Said firm has also acquired a franchise for wharf and pavilion at the foot of Broadway, the principal business street of San Diego, and has built new landing piers, pavilions and several launches and has caused the incorporation of applicant, Crescent Boat Company, with an authorized capital stock of 75,000 shares of the par value of $1.00 each, 300 of said shares being subscribed by the incorporators, and three shares issued to them.

On May 1, 1915, Crescent Boat Company, as party of the second part, entered into a contract with Point Loma Ferry Company, R. M. Creswell and M. E. Creswell, as parties of the first part, and Ralph J. Chandler and Charles W. Rand as parties of the third part, by the terms of which first parties are to procure the vesting of title in second party of twenty-year lease under date of April 18, 1915, for certain tide lands at the foot of "H" street, now known as Market street, San Diego, and to vest title in it by suitable conveyances of the other property of first parties described in the contract; and the third parties are to procure the vesting in second party of the rights in certain tide lands at the foot of Broadway, San Diego, enjoyed by said Rand, and to vest title in second party by suitable conveyances of their said properties described in the contract. Said third parties also agree to execute and deliver to one Martin H. Epstein, to be held by him in escrow, their note for $3,000.00, payable on or before two years, for the benefit of Point Loma Ferry Company, the note to be delivered to first parties upon the vesting of the properties described in the contract.

In consideration of said properties second party is to issue to first party 375 shares of its capital stock referred to as one-half thereof, and to third parties 372 shares of its capital stock, which, together with three shares issued for incorporation purposes, are referred to as constituting the other half of its capital stock. The reference in the contract to said number of shares is upon the erroneous supposition at the time the contract was drawn that the applicant's stock was of the par value of $100.00 per share.

The contract further provides that the first and third parties are each to cause one of their shares to be issued to Mr. Epstein, who is to serve as one of three directors, Captain R. M. Creswell and Mr. Chandler being the other directors; and that Captain Creswell is to be elected president, Mr. Chandler vice-president and general manager at a salary of $150.00 a month, Captain Hall secretary and superintendent of boating at a salary of $150.00 per month, and Mr. Epstein treasurer; and defines the duties of the general manager and superintendent. It also provides that pending the procuring of the Point Loma franchise in the name of second party and the vesting of the

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lease of the tide lands at the foot of Broadway in the name of second party, the necessary conveyances and assignments for all of the properties are to be held in escrow by Mr. Epstein, and that if the said properties are not vested on or before four months after date third parties may withdraw their conveyances and assignments; meanwhile the properties are to be operated by second party in its own name, the first and third parties sharing equally the profits or losses. It is provided that later the name of the corporation is to be changed to "Star and Crescent Boat Company."

The first and third parties guarantee the properties conveyed to be free of encumbrance and that they will respectively pay any claims later developing in reference to their respective properties.

It is stated that the properties are all free from encumbrance, that applicant has no debts, that the contract is being carried out, and that the necessary conveyances and assignments are in escrow, awaiting the performance of all of the terms of the contract and the permission of this Commission to issue the stock.

The $3,000.00 note is not proposed to be issued by the utility but by one of its proposed group of stockholders to another such group in the adjustment of values agreed upon between them.

Pursuant to said contract applicant has successfully operated said business and properties since May 1, 1915. Its condensed statement and trial balance introduced in evidence as applicant's Exhibit "2" shows net profits earned between May 1 and August 31, 1915, amounting to $11,402.78.

The general nature and extent of the business conducted is well indicated by the gross income shown upon the operative statement as follows:

Point Loma and North Island Ferry	$4,036 12
South San Diego and Imperial Beach Ferry	872 00
De Luxe excursions	7,100 65
Coronado Islands	2,760 75
Miscellaneous passenger service	7,083 45
Towing and freight	3,892 16
Income from rentals	223 34
Interest earned	15 34
Total	$25,983 81

The items designated "De Luxe excursions" and "Coronado Islands" indicate revenues derived from the operation of excursion boats running upon regular schedules. The item "Miscellaneous passenger service" represents revenues derived from the carriage of passengers upon special trips and excursions for which boats are chartered, and occasional and irregular service of a similar character, such as carrying belated passengers to vessels in the harbor, excursions and trips to

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visiting warships and other vessels. The item "Towing and freight" represents revenues derived from the transfer of freight from the wharves to vessels in the harbor, the carriage of parcels upon the excursion and ferry boats and the towing of rafts, lighters and similar craft for others. The item "Income from rentals" represents revenues derived from wharfage charges received for the use of the wharves operated as part of the business.

The total values of the tangible properties, with the cost and estimated cost of acquiring the franchises and leases, are stated by applicant as follows:

Launches (17) and equipment	$44,016 38
Wharf equipment (lighters, floats, etc.)	1,398 58
Piers and pavilions (4) and equipment	18,618 40
Skiffs (1)	20 00
Furniture and fixtures	645 24
Tools and appliances	50 00
Merchandise stock (fuel oil, etc.)	113 31
Merchandise stock (postal cards)	19 80
Stationery stock	271 42
South San Diego Ferry franchise	379 50
Franchise for wharf and pavilion foot of Broadway, and its transfer	300 00
Franchise for wharf and pavilion foot of Market street	333 00
Total	$66,165 63

Or over 88.2 cents per share for all of applicant's capital stock of 75,000 shares.

The last three items in the above tabulation relating to franchises represent the actual cost of procuring them, except that the figures for the Market street wharf are estimates.

In addition to these sums there were comparatively nominal sums paid in acquiring the present rights enjoyed at Roseville, at La Playa and at South San Diego, the amounts of which could not be supplied. The values placed upon the tangible properties are stated to represent values of the properties in their present condition, suitable allowance having been made for depreciation, except in cases where the property has been constructed within the last few months. The above valuations are stated for the purposes of this proceeding only.

Applicant's attorney stated that it was not desired to capitalize the items of cash in various places, amounting to $6,522.40, nor the accounts and notes, amounting to $2,432.55, which are stated to be worth par.

Market street and Broadway, in the city of San Diego, are the only streets leading to the west bay front on which there are street car lines reaching deep water. Applicant's wharves stand in forty feet of water. These locations are considered by it peculiarly desirable and valuable for use in connection with its business.

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We find as a fact that the purposes for which the proceeds of the said stock hereinafter authorized to be issued are to be used are not in whole or in part reasonably chargeable to operating expenses or to income.

ORDER.

Crescent Boat Company having applied to the Railroad Commission of the State of California for authority to issue 74,997 shares of its capital stock of the par value of $1.00 per share for the acquisition of the properties described in the application; and a hearing having been held upon said application, and this Commission having found that the property proposed to be procured or paid for by such issue is reasonably required for the purpose of conducting applicant's business, as hereinbefore described, and that the purposes for which applicant proposes to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered that Crescent Boat Company be and it is hereby authorized to issue 74,997 shares of its capital stock, of the par value of $1.00 per share, upon the receipt by said company of good and sufficient transfers for all of the property described in the application and the copy of contract attached thereto, said property to be transferred free of encumbrance. This order is upon the following conditions, and not otherwise, to wit:

1. The stock herein authorized to be issued shall not be taken, before this Commission or any other public authority, as representing for rate fixing purposes the actual value of the property.

2. The authority hereby given to issue stock shall apply only to stock issued by applicant on or before January 1, 1916.

3. Applicant shall report to this Commission within thirty days after the issuance of said stock the fact of the issue thereof, the names of the persons to whom said stock was issued, and the number of shares issued to each person.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2793.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR AN ORDER EXEMPTING SAID COMPANY FROM THE PROVISIONS OF CHAPTER 494 OF THE LAWS OF 1915.

Application No. 1826.

Decided September 30, 1915.

Applicant applies for an order exempting it from the provisions of chapter 494, Laws of 1915, prohibiting trainmen from receiving or delivering messages by

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telephone or telegraph and in an opinion this day rendered, the Commission holding that electric lines are not subject to the provisions of this order, application granted.

Jesse H. Steinhart, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by Oakland, Antioch and Eastern Railway for an order authorizing the railway to require or permit its conductors, brakemen and trainmen to receive, deliver and transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train. The application is, in effect, for an order declaring chapter 494 of the Laws of 1915 to be inapplicable to Oakland, Antioch and Eastern Railway.

In the decision this day rendered in Application No. 1825, being a similar application filed by the Southern Pacific Company and other carriers, chapter 494 is held to be inapplicable to common carriers operated by electric energy. This conclusion is reached in accordance with suggestions made by the various brotherhoods, on the ground that chapter 494, in the very nature of things, is not reasonably applicable to common carriers operated by electric energy.

I recommend that the application be granted, and submit the following form of order:

ORDER.

Oakland, Antioch and Eastern Railway having filed its petition asking that the Railroad Commission make its order authorizing said railway to require or permit its conductors, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone or telegraph line, any order for the movement of any of its trains, and the Railroad Commission finding that said request is reasonable and should be granted,

It is hereby ordered that said application be and the same is hereby granted, and that Oakland, Antioch and Eastern Railway be and the same is hereby authorized to require or permit any of its conductors, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

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Decision No. 2794.

IN THE MATTER OF THE APPLICATION OF LEO H. SUSMAN, K. I. DAZEY, E. A. WEYMOUTH, R. F. ROBINSON AND C. R. GILL, TRUSTEES OF THE STOCKHOLDERS OF WEST SACRAMENTO ELECTRIC, AND OF THE PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING SAID TRUSTEES TO TRANSFER UNTO THE PACIFIC GAS AND ELECTRIC COMPANY ALL OF THE PROPERTY FORMERLY BELONGING TO SAID WEST SACRAMENTO ELECTRIC AND NOW HELD BY SAID TRUSTEES.

Application No. 1886.

Decided September 30, 1915.

Applicants apply for and are granted permission to transfer the properties of the West Sacramento Electric to the Pacific Gas and Electric Company, which latter company already owns all of the capital stock of the West Sacramento Company whose corporate existence expired on the 5th of September, 1915.

Leo H. Susman, for Applicants.

Report of the Commission.

This is an application by the trustees in liquidation for creditors and stockholders of West Sacramento Electric, whose term of corporate existence has expired, for authority to transfer to Pacific Gas and Electric Company all of the property now held by said trustees as such, and formerly owned by said West Sacramento Electric. The Pacific Gas and Electric Company joins in the application.

At the hearing held at the office of the Commission on September 27, 1915, it was shown that Pacific Gas and Electric Company heretofore acquired and paid for all of the capital stock of West Sacramento Electric, and appears by the stockbook of said West Sacramento Electric to own all but five of its shares. The remaining five shares were caused to be issued to five individuals for the purpose of qualifying them as directors of said West Sacramento Electric, but they have endorsed their shares to Pacific Gas and Electric Company, which is the real owner of them.

Said capital stock of West Sacramento Electric was acquired pursuant to authority given by this Commission in Decision No. 2621, the authority given being upon the condition that the stock should be acquired on or before October 31, 1915, and that the applicants therein should report within ten days after the purchase the date of purchase and transfer.

It was shown at the hearing that these conditions had been complied with; that West Sacramento Electric has no debts; that its articles of incorporation were so amended that its corporate term of existence

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expired on September 5, 1915; and that as Pacific Gas and Electric Company is, through stock ownership, the real owner of said property, it desires to acquire all of said property by transfer, the consideration therefor having been heretofore paid in the acquisition of all of the capital stock of said West Sacramento Electric.

ORDER.

Pacific Gas and Electric Company and the trustees for creditors and stockholders of West Sacramento Electric, whose term of corporate existence expired September 5, 1915, having applied to the Railroad Commission for authority to transfer to said Pacific Gas and Electric Company all of the property formerly owned by West Sacramento Electric, and a public hearing having been held upon said application, and it appearing that it is for the public interest to authorize said transfer,

It is hereby ordered that Pacific Gas and Electric Company be and it is hereby authorized to acquire, and Leo H. Susman, K. I. Dazey, E. A. Weymouth, R. F. Robinson and C. R. Gill as trustees in liquidation for the creditors and stockholders of West Sacramento Electric be and they are hereby authorized to transfer and convey all of the property formerly owned by said West Sacramento Electric and to execute and deliver indenture, form of which is attached to the application herein as Exhibit "A," said transfer to be as of date of September 30, 1915.

The authority hereby given is upon the following conditions, and not otherwise, to wit:

1. Applicants shall report to this Commission on or before October 10, 1915, the fact of such transfer and the date thereof;

2. The authority hereby given to execute said indenture is for the purposes of this proceeding only and an approval thereof only in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said indenture as to any other legal requirements to which it may be subject.

Dated at San Francisco, California, this 30th day of September, 1915.

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DECISION No. 2795.

IN THE MATTER OF THE APPLICATION OF THE CITY OF REDONDO BEACH FOR AUTHORITY TO CONSTRUCT TWO GRADE CROSSINGS ACROSS THE TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND ACROSS THE TRACKS OF THE PACIFIC ELECTRIC RAILWAY COMPANY AT EMERALD STREET AND AT DIAMOND STREET, IN SAID CITY OF REDONDO BEACH.

Application No. 1806.

Decided September 30, 1915.

City of Redondo Beach applies for permission to construct crossings at Emerald and Diamond streets across the tracks of the Santa Fe Railway Company and the Pacific Electric Company, and it appearing that railroad traffic across these proposed extensions is very light and that public convenience requires the construction of the crossings applied for, application granted.

Frank Karr, for Pacific Electric Railway Company.

Robert Brennan, for The Atchison, Topeka and Santa Fe Railway Company.

F. L. Perry, for City of Redondo Beach.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

In this application the city of Redondo Beach asks the Commission's permission for the installation and maintenance of two crossings at grade across the tracks of the Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, one of the said crossings being at the foot of Emerald street and the other at the foot of Diamond street, in the city of Redondo Beach, California.

This city has recently voted bonds in the sum of one hundred and twenty-one thousand dollars ($121,000.00), which have been sold, and contracts have been let for the construction of a municipal pleasure pier. This pier is to be constructed in the shape of a triangle, one leg to reach the extension of Emerald street on the water front and other leg to reach a point on the right of way of The Atchison, Topeka and Santa Fe Railway Company, about five hundred (500) feet south of Emerald street extension. At the present time the city has no street leading to the proposed site of the pier, and the granting of this application, as far as the Emerald street crossing is concerned, will make this pier and the ocean front accessible.

At Diamond street the city desires to connect this street with the short thoroughfare west of the Santa Fe tracks and known as Diamond

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street extension. This crossing involves a part of a crossing which was considered in Application No. 1253 and covered by the Commission's decision No. 1768. I will again refer to that decision.

Emerald street and Diamond street are two of the principal east and west thoroughfares of the city of Redondo Beach, with their present western termini at Pacific avenue. The extensions to both of these streets are desired for the convenience of the public in passing from the city proper to the proposed pier and to the ocean front with its amusement concessions, restaurants and bathing establishments. Both crossings are absolutely necessary in order to make the beach accessible. They are, in fact, used at this time, although no public roads cross the private right of way of the railroad companies.

At Emerald street pedestrians and vehicles habitually cross the rights of way of both the Santa Fe and the Pacific Electric Railway, and have done so for a good many years. Within the last year posts have been placed in such a way as to interfere with vehicular traffic. These posts, however, can be removed by hand at will, and teams pass freely back and forth over the railroad right of way.

The railroad traffic at this point is very light. The Santa Fe operates but two regular passenger trains a day, one each way, and the balance of train movements consists of switching operations under very slow speed.

At the hearing in Redondo Beach on September 11, 1915, it developed that The Atchison, Topeka and Santa Fe Railway Company was willing to grant an easement for both the Diamond street and the Emerald street crossings, and that the Pacific Electric Railway has agreed to grant an easement on Emerald street provided the city purchases from them the necessary approach to the pier. This purchase is practically completed.

The city claims that now an overage of about one thousand (1,000) pedestrians on week days and several thousands on Sundays and holidays cross the rights of way and tracks of both railroad companies at or near Emerald street. After the completion of the pleasure pier this number will undoubtedly largely increase. Under present conditions people in reaching the water front cross the railroad tracks anywhere, while, if the proposed crossing is constructed the traffic will undoubtedly use Emerald street, and danger to pedestrians and vehicles will be greatly lessened. The vehicular traffic at this point is very light and consists only of such teaming as is necessary to serve the concessions on the beach. It is not the intention of the city to permit wagons and automobiles on the pier at all times, but only in limited numbers on holidays and other special occasions. This traffic will be regulated by city ordinance.

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The grade of the proposed pier is but a few inches above the present grade of the rights of way, and for that reason a separation of grades is impracticable.

The crossing desired at Diamond street is to be maintained for pedestrians only. The parcel of land involved at this point is included in the property considered in a former application by the city of Redondo Beach and covered by the Commission's order in Decision No. 1768. That order granted permission to construct a grade crossing across the tracks of The Atchison, Topeka and Santa Fe Railway Company and the Pacific Electric Railway on Hermosa avenue, with the condition that the Benita avenue crossing be discontinued and closed. The Hermosa avenue crossing is not as yet constructed, and conditions have arisen which will prevent the construction of Hermosa avenue from the west side to the east side of the railroad tracks for some time to come. I am of the opinion, therefore, that this application, as far as the Diamond street crossing is concerned, should be considered on its own merits and should not be dependent on the Hermosa avenue crossing. Diamond street, if the application is granted, will cross two (2) tracks of The Atchison, Topeka and Santa Fe Railway Company and also two (2) tracks of the Pacific Electric Railway, the latter connecting with a double track electric line on Pacific avenue. The strip owned by the city and designated as Diamond street extension abuts the right of way of The Atchison, Topeka and Santa Fe Railway Company on the west and is forty-nine (49) feet wide. Diamond street proper, which connects with Pacific avenue, is eighty (80) feet wide, and the proposed crossing which will connect these two streets is shown on the map accompanying the application as being 91.81 feet on the east side and 91.14 feet on the west side. The crossing was purposely designed to be much wider than the Diamond street extension and a little wider than Diamond street proper, on account of the character of the junction of Pacific avenue and Diamond street and the fact that it must necessarily run diagonally across all tracks. A separation of grades for this crossing is practically impossible, by reason of the close proximity of the point of crossing to the ocean. After a discussion at the hearing the representatives of the railroad companies withdrew all objections to the installation of both of these crossings, and inasmuch as I am convinced that public necessity and convenience require this installation, I shall recommend to the Commission that the application be granted. By reason of the light railroad traffic at both points of crossing and the fact that the view in all directions is unobstructed, the installation of automatic signals or flagmen does not appear necessary. The hazard to the public will not be increased but lessened by the installation of the two crossings.

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I recommend the following form of order:

ORDER.

The city of Redondo Beach, California, having applied to the Commission for permission to establish grade crossings at Emerald street and at Diamond street, both within the limits of said city, as shown by the map and profiles filed with the application: and a hearing having been held, and it appearing to the Commission that the application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be granted applicant for the construction of the grade crossings as above described and under the following conditions, viz:

(1) The entire expense of constructing both crossings, together with the cost of their maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant, except as hereinafter ordered under (2).

(2) The expense of maintaining the crossings in good and first-class condition for the safe and convenient use of the public inside the tracks and two (2) feet on the outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company and the Pacific Electric Railway, respectively, for each of their tracks.

(3) The grade crossing shall be constructed of a width and type to conform with the specifications as set forth in the application, and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

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Decision No. 2796.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND SOUTH EASTERN RAILWAY COMPANY FOR AN ORDER EXEMPTING SAID COMPANY FROM THE PROVISIONS OF CHAPTER 494 OF THE LAWS OF 1915.

Application No. 1802.

Decided September 30, 1915.

San Diego and South Eastern Railway Company applies for an order exempting it from the provisions of Chapter 494, Laws of 1915, prohibiting trainmen from receiving or delivering orders governing the movement of trains, and it appearing that the majority of applicant's line is operated by electricity and that only a limited number of trains daily are run over the portion operated by steam, application granted.

Read G. Dilworth, for Applicant.

Report of the Commission.

Thelen, *Commissioner.*

This is an application for an order authorizing San Diego and South Eastern Railway Company to require or permit its engineers, firemen, conductors, brakemen and trainmen to receive, deliver and transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train.

Chapter 494 of the Laws of 1915 specifically authorizes the Railroad Commission to exempt common carriers from the operation of this statute in such cases or classes of cases as the Commission may find to be proper.

San Diego and South Eastern Railway Company is operated in part by electric energy and in part by steam. In so far as the company is operated by electric energy, it falls within the policy this day declared by the Railroad Commission in its decision in Application No. 1825, being a similar application filed by the Southern Pacific Company and other carriers. In this decision, the Commission adopts the suggestion of the Brotherhoods to the effect that chapter 494 is not properly applicable to common carriers operated by electric energy.

On only 5.8 miles of its line of railway, being the portion from Coronado Junction to Tia Juana, does San Diego and South Eastern Railway Company operate by steam more than four trains each way every twenty-four hours.

The particular facts in connection with the operations of this carrier, as shown by the evidence, are such that the safety of employees and the traveling public does not require the application of chapter 494

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of the Laws of 1915 to these 5.8 miles of railroad. The representatives of the Brotherhoods at the hearing stated that they are entirely willing that San Diego and South Eastern Railway Company shall be exempted from the operations of chapter 494.

I recommend the following form of order:

ORDER.

San Diego and South Eastern Railway Company having filed its petition asking that the Railroad Commission make its order authorizing the company to require or permit its conductors, engineers, firemen, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone or telegraph line, any order for the movement of any of its trains, and the Railroad Commission finding that said request is reasonable and should be granted,

It is hereby ordered that said application be and the same is hereby granted, and that San Diego and South Eastern Railway Company be and the same is hereby authorized to require or permit any of its conductors, engineers, firemen, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone or telegraph line, any order for the movement of any train.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION NO. 2797.

IN THE MATTER OF THE APPLICATION OF HUMBOLDT TRANSIT COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE AND PLEDGE EIGHT OF ITS FIRST MORTGAGE 5 PER CENT SINKING FUND THIRTY-YEAR GOLD BONDS TO WILLIAM BUTTERWORTH AS COLLATERAL SECURITY.

Application No. 1888.

Decided September 30, 1915.

Applicant applies for and is granted permission to execute its promissory note bearing interest at 5 per cent and to issue and pledge as security therefor $8,000.00 face value of bonds, such note to be issued at not less than its face value, proceeds to be applied to the purchase of property for car barn purposes.

Horace R. Hudson, for Applicant.

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REPORT OF THE COMMISSION.

This is an application by Humboldt Transit Company for an order authorizing the issue of a one-year note for $4,000.00, with interest at 5 per cent per annum, and authorizing applicant to pledge as collateral security for the payment of said note $8,000.00 of applicant's first mortgage 5 per cent gold bonds.

A public hearing was held in San Francisco on September 29, 1915. The evidence shows that applicant is engaged in the operation of a street railroad situated in the city of Eureka; that during the month of August, 1915, it purchased a certain block of land in said city for the sum of $4,000.00, for the purpose of using said land as the site for a car house; and that applicant desires to use the proceeds of this note for reimbursing itself for the purchase of said property. The evidence further shows that said property will be used by applicant for the construction, extension and improvement of its facilities and service. The money is to be borrowed from William Butterworth, applicant's president.

ORDER.

Humboldt Transit Company having applied to this Commission for an order authorizing the issue of a certain promissory note for $4,000.00, as hereinafter more fully described, and for authority to pledge certain bonds as security therefor;

And a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which said note, or the proceeds thereof, are to be used are not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered that Humboldt Transit Company be and the same is hereby authorized to issue its promissory note for $4,000.00 to William Butterworth, said note to bear interest at the rate of 5 per cent per annum, and to be payable on or before one year from the date of issue, and said Humboldt Transit Company is further authorized to pledge to said William Butterworth, as collateral security for the payment of said note, $8,000.00 of said applicant's first mortgage 5 per cent sinking fund thirty-year gold bonds. The authority herein granted is granted upon the following conditions, and not otherwise:

1. Humboldt Transit Company shall issue said note so at to net not less than the face value thereof.

2. Upon payment of said note the said $8,000.00 of bonds given as collateral security shall be returned to applicant's treasury and shall not thereafter be issued without the authority of this Commission.

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3. Within thirty days after the note herein authorized to be issued shall have been issued and the bonds herein authorized to be pledged shall have been pledged, the applicant shall report such fact to this Commission, together with a statement of the face value of the note issued, the date, maturity, rate of interest and payee of said note.

4. The note herein authorized shall be issued by applicant on or before November 30, 1915.

5. This order shall not become effective until Humboldt Transit Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION NO. 2798.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, F. G. DRUM AND WARREN OLNEY, JR., AS RECEIVERS OF THE WESTERN PACIFIC RAILWAY COMPANY, NORTHWESTERN PACIFIC RAILROAD COMPANY AND WESTERN ASSOCIATION OF SHORT LINE RAILROADS COMPOSING A NUMBER OF SHORT LINE RAILROADS OPERATING WITHIN THE STATE OF CALIFORNIA, TO BE RELIEVED FROM THE PROVISIONS OF CHAPTER 494, CALIFORNIA STATUTES OF 1915, RELATIVE TO TRANSMISSION OF TRAIN ORDERS.

Application No. 1825.

Decided September 30, 1915.

Application of various carriers operating in California for an order exempting them from the provisions of chapter 494, Laws of 1915, which provided that no trainman could receive or transmit, by telephone or telegraph, orders governing the movement of trains, and after a hearing certain modifications are agreed upon by parties in interest, excepting Southern Pacific Company, who petitions to be entirely excepted from the provisions of such statute.

Held, That as this act was passed by the State legislature and did not originate from the Commission, this board has not the power to make exceptions so comprehensive as to practically nullify the statute. The following exceptions allowed, to become effective within thirty days, and applicants directed to modify any rules that may be in conflict therewith within that time: 1. Shall not apply to roads operated by electricity. 2. Shall not apply when trainmen voluntarily ask for orders. 3. Shall not apply in case of accident, obstructions, failure of signals, etc. 4. Shall not apply after the expiration of 15 minutes from the time of arrival of a train at a train telephone or to the operation of working, relief or wrecking trains. Nothing herein shall be construed as preventing a trainman from calling up a dispatcher and giving his whereabouts and asking for or receiving information not amounting to a train order.

George D. Squires, for Southern Pacific Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

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A. S. Halsted, for San Pedro, Los Angeles and Salt Lake Railroad Company.

A. R. Baldwin, for F. G. Drum and Warren Olney, Jr., Receivers of Western Pacific Railway Company.

Stanley Moore, for Northwestern Pacific Railroad Company.

Clarence M. Oddie and *D. M. Swobe,* for Western Association of Short Line Railroads.

John Finlay, for Brotherhood of Locomotive Engineers.

J. A. Cowgill, for Order of Railroad Telegraphers.

N. S. Ballinger, for Order of Railroad Conductors.

D. S. Valentine, for Brotherhood of Locomotive Firemen and Enginemen.

William J. O'Brien, for Brotherhood of Railroad Trainmen.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application for an order relieving petitioners from the provisions of chapter 494, of the Laws of 1915, referring to the receipt, delivery and transmission by engineers, firemen, conductors, brakemen and trainmen at any receiving or forwarding instrument of any telegraph or telephone line of orders for the movement of trains.

Chapter 494, of the Laws of 1915, reads as follows:

"CHAPTER 494.

An act to promote the safety of employees and the traveling public upon railroads by prohibiting certain persons, firms and corporations operating railroads in this state from requiring or permitting certain employees to receive, deliver or transmit over telegraph or telephone lines any orders for the movement of trains, except in such cases or classes of cases as may be permitted by the Railroad Commission.

The People of the State of California do enact as follows:

Section 1. It shall be unlawful for any person, firm or corporation operating a railroad with more than four trains each way every twenty-four hours, to require or permit any engineer, fireman, conductor, brakeman or trainman to receive, deliver or transmit at any receiving or forwarding instrument of any telegraph or telephone line, any order for the movement of any train, except in such cases or classes of cases as may be permitted by the Railroad Commission; provided, however, that the foregoing provisions shall not apply to interurban or street railroads. Any person, firm or corporation violating any of the provisions of this act shall

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be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment."

This statute became effective on August 8, 1915. On August 5, 1915, the petitioners herein filed their application for relief, in which they asked that each of them be relieved from the provisions of this statute with reference to all their present operating practices. Petitioners further requested that pending the hearing and final order of the Railroad Commission herein, an order be entered permitting them to continue their present practices. On August 9, 1915, this Commission made its order reciting its desire to have a hearing in this proceeding before the question is finally determined and relieving the petitioners from the provisions of chapter 494 until the further order of the Commission.

Public hearings in this proceeding were held in San Francisco on September 3, 4, 10, 13, and 14, 1915, at which hearings the views of the railroads and of the brotherhoods were fully presented.

Chapter 494, by its title, is an act to promote the safety of employees and the traveling public upon railroads. The act applies only to persons, firms or corporations operating a railroad with more than four trains each way every twenty-four hours. The act is not directed against train dispatching, either by telegraph or by telephone, through the agency of an operator, but only against the receipt, delivery or transmission of orders by telegraph or telephone directly by or to engineers, firemen, conductors, brakemen or trainmen. The statute does not prohibit the use of telephones by engineers, firemen, conductors, brakemen or trainmen for any purpose other than for the receipt, delivery or transmission of train orders. Under the provisions of the statute, trainmen may call up the dispatcher by telephone to report their whereabouts or to ask for information or for any other purpose except the receipt, delivery or transmission of a train order.

A train order, it is needless to say, is an order for the movement of a train. A "train" is defined in the Standard Code of the American Railway Association as "an engine, or more than one engine coupled with or without cars, displaying markers." "Markers" are flags or lamps on the rear of the last car to denote to other trains that the train is intact.

Train orders are given by the dispatcher over the signature of his designated superior. These orders are addressed to those who are to execute them, naming the place at which each is to receive his copy. Train orders for a train must be addressed to the conductor and engineman, and also to anyone who acts as its pilot. A copy for each person

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addressed must be supplied by the operator. Orders addressed to operators restricting the movement of trains must be respected by conductors and enginemen the same as if addressed to them.

Formerly train orders were transmitted exclusively by telegraph to an operator, who then gave a copy of the order to each person who was to execute it. Within the last few years, train orders are more and more being transmitted by telephone instead of by telegraph. Applicants' Exhibit No. 1 herein gives information with reference to 204,526 miles of railroad operated in the year 1914 in the United States and Canada. Out of this total mileage, 76,664 miles were operated by telephone and 126,232 miles by telegraph. The increase over the preceding 12 months in the mileage operated by telephone was 9,908 miles.

Out of a total of 212,622 miles of railroad operated in the United States and Canada, as reported for the year 1915, 83,365 miles were operated by telephone and 125,147 miles by telegraph. Applicants' Exhibit No. 1 contains no information on the question of the percentage of cases in which, on the railroad lines operated by telephone, orders were given by telephone directly to trainmen as distinguished from the usual case in which the order, even if given by telephone, is given to the operator, who then transmits it to the trainmen.

Hereinafter I shall refer to the extent to which trains in this State are at the present time operated by telephone. Before doing so, however, I desire to set forth the practice which is pursued when orders are given by the dispatcher directly to a trainman.

The trainman takes down the telephone receiver, presses a button, calls the dispatcher and reports. If the dispatcher desires to give an order he says, in effect, "I will give you an order," designates the number of copies and the form of blank, and then proceeds to give the order, spelling out all important words and figures. The trainman has in his hand regular train order blanks, with carbon paper, so that he can make the number of copies specified by the dispatcher. He writes down the order as given to him by the dispatcher and then repeats it back, word for word, to the dispatcher, who underlines each word of the order as he has written it in his book, so as to make sure that the order has been correctly taken down by the trainman. If the order is correctly repeated to him, but not before, the dispatcher tells the trainman that the order is complete, designating the time. If the order has been taken down by a conductor, he keeps one copy for himself, delivers one copy to the engineer and later turns in one copy to the superintendent's office. The engineer reads back the order to the conductor and is usually required to show it to the fireman and the head brakeman. The conductor is usually required to show his copy of the

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order to the rear brakeman. When the order has been executed, the superintendent's copy is turned in at the office.

It must be understood at the outset that the great majority of all train orders, even by telephone, are taken by operators, and not by trainmen, and that chapter 494 of the Statutes of 1915 in no way interferes with the taking of such orders by operators. The purpose of enacting chapter 494, as explained by representatives of the various brotherhoods at the hearings, was to prevent the taking of orders, either by telegraph or telephone, directly by a trainman or engineman. The position of the brotherhoods will be more fully set forth hereinafter, but for the present it will be sufficient to say that they take the position that very frequently trainmen or enginemen already have large responsibilities and possibly many orders in their possession, and that if they are burdened with the necessity of themselves taking additional orders directly, the safety of the passengers and employees may be seriously prejudiced.

Chapter 494, as originally introduced in the legislature of 1915, contained no reference to the Railroad Commission. During the closing days of the session, a written agreement was signed by the legislative representatives of the larger railroads of the State and by the representatives of the various brotherhoods, agreeing that the words "except in such cases or classes of cases as may be permitted by the Railroad Commission" should be inserted in the bill, and that it should then pass under the agreement thus entered into. The bill was thereafter passed and approved. Both the railroads and the brotherhoods thus consented and agreed that this Commission should be charged with the responsibility of saying in which cases or classes of cases the railroads referred to in chapter 494 should be relieved from the general prohibition of the act against the receipt, delivery or transmission of train orders directly by trainmen or enginemen.

Reference will now be made to a portion of the evidence offered in behalf of the carriers and then to the position taken by the brotherhoods.

Evidence was offered in behalf of the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Western Pacific Railway Company, Northwestern Pacific Railroad Company and Western Association of Short Line Railroads.

Southern Pacific Company.

Out of the ten divisions of the Southern Pacific Company, seven are affected by chapter 494, as follows: The San Joaquin, Coast, Sacramento, Shasta, Western, Stockton and Los Angeles divisions.

On the San Joaquin division, telephones are used for the transmission of orders for the operation of the joint track used by the Southern

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Pacific Company and The Atchison, Topeka and Santa Fe Railway Company over the Tehachapi Mountains and over the McKittrick branch, on which branch only two trains per day are operated. There are telephones at 11 non-agency stations on the joint track, as well as at 14 regular telegraph stations. Some 50 to 60 train movements take place each way per day over this joint track. Train crews over the joint track are instructed to call up at telephone booths at non-agency stations. On the Coast division, the telephone is used for train dispatching between Watsonville Junction and Santa Barbara, over the branch line from Del Monte Junction to Pacific Grove, and also between Lompoc Junction and Lompoc. About 296 miles on this division are operated by telephone. There are 66 telephones on this division, of which about half are at blind sidings. Train crews are instructed that where trains are delayed at telephone booths, they must call up the dispatcher at once. On the Sacramento division, telephone dispatching is not used. On the Shasta division there are 24 telephones, of which 14 are located in telephone booths and the others either in section houses or at the stations, with the exception of 4, which are located on telegraph poles. Practically the entire Shasta division of the Southern Pacific Company in California is operated by telephone, and the train crews are instructed to call up from telephone booths. On the Western division, the telephone is used for train dispatching between Niles and Tracy and between Oakland and Port Costa, but there are no instructions compelling train crews to call up for orders. On the Stockton division, 13 telephones are installed, most of which are located between Tracy and Brighton. The Southern Pacific Company presented testimony to show that out of 14,969 train orders issued over a six months period on the Stockton division, 210 orders, or 1.4 per cent, were issued directly to train or enginemen. There are no instructions on this division compelling train crews to call up for orders. On the Los Angeles division, no telephones are used for train dispatching, but 72 telegraphones are used, of which 27 are located in telegraph offices, the remaining number being located in booths, on telegraph poles, at blind sidings, in section houses on the desert and in towers. There are written instructions on this division directing train crews to communicate with the dispatcher by means of telegraphones as soon as possible after arrival at a meeting place if the other train is not seen approaching.

The Southern Pacific Company placed on the stand either the division superintendent or assistant superintendent of each of the above seven divisions, all of whom testified that there is no danger in connection with the operation of trains by means of orders transmitted directly to trainmen or enginemen, and that the prompt movement of trains

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would be seriously interfered with if the right to compel train crews to call up immediately is to be denied to the carriers. A number of conductors and engineers of the Southern Pacific Company testified that they had received train orders by telephone and that they considered the practice fully as safe as the receipt of orders by telegraph through the instrumentality of a telegraph operator.

The Southern Pacific Company also presented testimony to show that out of 11,911 suggestions received by the company from its employees and others during the three years ending June 30, 1915, under its "Safety First" movement, not one suggestion was made to the effect that the receipt of orders by telephone is unsafe.

The Atchison, Topeka and Santa Fe Railway Company.

Testimony presented on behalf of The Atchison, Topeka and Santa Fe Railway Company shows that this company's entire line of railroad in California is operated by telephone. During the six months ending June 30, 1915, 18,840 train orders were issued by this company's dispatchers on the Valley division, of which 161 were issued directly to conductors and 13 to engineers. The division superintendent of the Valley division testified that during this time no accident or hazard of accident resulted on this division from any of the orders given directly to trainmen or enginemen, while during the same period, 22 hazards of accident resulted from the handling of orders by operators. The Santa Fe does not instruct its train crews to call up for orders. Testimony presented by the division superintendent and by a number of trainmen shows that the trainmen voluntarily call up for orders over the telephone and that no difficulty has arisen on the Santa Fe's system from this practice.

San Pedro, Los Angeles and Salt Lake Railroad Company.

The San Pedro, Los Angeles and Salt Lake Railroad Company maintains no permanent telephone booths for use in train dispatching, except at the junction of its main line with the branch line or spur, known as Bly spur. The telephone maintained at this booth is used only in cases of emergency. The trainmen are equipped with portable telegraphones for the purpose of calling up the dispatcher and receiving orders, if necessary, in cases of accident, engine failure or delays. There are no instructions compelling train crews to call up for orders.

Western Pacific Railway Company.

Western Pacific Railway Company maintains 12 telephones on its route along the Feather River, between Oroville and Keddie, a distance of 76 miles. Four of these telephones are maintained at telegraph

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offices and eight at blind sidings. There are also three telephones in the Altamont Hills, but these are seldom used. During the period between January 1st and July 1, 1915, 10,743 train orders were issued, of which 154 were issued directly to train crews. Of these 154 orders, all were helping orders except 12. There are no instructions compelling train crews to call up for orders.

Northwestern Pacific Railroad Company.

Northwestern Pacific Railroad Company uses the telephone for giving orders to train and engine crews, principally on the Northern division, which is still practically under construction, and where numerous work trains are still employed. On only a relatively small portion of its mileage, however, does this carrier operate more than four trains each way every twenty-four hours. This carrier's principal objections to chapter 494 were in connection with the movement of work trains and movements in automatic block signal territory. Each of these objections was removed by concessions made by the brotherhoods, as hereinafter indicated.

Western Association of Short Line Railroads.

Western Association of Short Line Railroads, a corporation, which includes among its members 15 short line railroads in California, is also a petitioner herein. Evidence, however, was presented in this proceeding in behalf of only one of its members, the McCloud River Railroad Company. This company operates its entire railroad by telephone dispatching. During only a portion of the year, between about April 1st and October 1st, does this company operate more than four trains each way every twenty-four hours. Most of the company's trains are lumber trains.

The carriers presented evidence to show that since the advent of telephone train dispatching in California, there has not been a single accident or hazard of accident in this State resulting from telephone dispatching.

The position of the brotherhoods is set forth in a statement filed by them, which statement is as follows:

> "We believe the telephone booths or boxes are necessary for the best interests of the public and the railroads. However, we do not believe they should be used to place added burdens or added responsibility upon the enginemen or trainmen except in cases of emergency.
>
> We believe that the emergency should be defined in order that enginemen and trainmen may know just what they should do in certain cases. We do contend that where a certain number of steam trains are operated on a single track that the danger attached to the taking of orders by telephone is so great that we feel justified in objecting to such a practice.

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The Government of the United States, realizing the importance of train movements by train orders, have restricted the number of hours of work to 9 hours to those handling train orders exclusively. This has not been done in any other class of railroad service. Consequently we claim that enginemen and trainmen should not be called upon to perform this important service on account of the danger to the public and to the men as well as the attendant loss of property in accidents. As further evidence of the dangers attached to the operations of trains many thousands of dollars have been spent to install block signals.

We believe the importance of operating trains by orders is so great that all safeguards that are possible should be used in an effort to reduce the number of lives lost in accidents. Safety First is the slogan of the railroads today and we believe that it should be carried out in all departments.

Orders have been issued by an official of the Southern Pacific Company that engineers and conductors must upon arrival at blind sidings or stations where there are no operators at work immediately call the dispatcher. We believe the duties of engineers and conductors at present to be so arduous that the further responsibility of taking orders should not be placed upon them except in cases of emergency, but that it should remain in the hands of those whose business it is to do this work.

Owing to the danger attached to operation of steam trains by train order a certain amount of training is necessary for this important work and engineers and conductors do not have the time or opportunity to properly prepare as they already have enough to do in their own lines of work. The opportunity for misunderstandings is so great that we believe it to be a bad practice and therefore ask for relief in the matter.

It is a frequent occurrence for engineers and conductors to receive and execute from fifteen to twenty orders in going over the division on which they work. This is to show you that they already carry an immense responsibility."

In response to a request from the Commissioner presiding at the hearing, the brotherhoods presented their views with reference to the cases or classes of cases in which this Commission might properly authorize the continuance of the receipt, delivery or transmission of train orders directly by trainmen or enginemen. These views may be summarized as follows:

1. Chapter 494 should not apply to railroads operated by electric energy.

2. Chapter 494 should not apply to prevent the voluntary calling up and receipt by trainmen or enginemen of orders.

3. Chapter 494 should not apply in any case of casualty or unavoidable accident, or act of God, or to any delay or wreck caused by obstructions on the track through collision or other cause, or to the failure of block signals.

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4. Chapter 494 should not apply to prevent the receipt, delivery and transmission of train orders by and to trainmen and enginemen on passenger or mixed trains after a delay of twenty minutes, and on all other trains after a delay of forty minutes, provided that the act shall not apply to the crews of wrecking or relief trains and that the crews of work trains may be instructed to report by telephone for orders at stated hours, not exceeding three per day.

An order by this Commission in accordance with this suggestion would seem to meet the objections of all the carriers except the Southern Pacific Company. In fact, several of the carriers expressly stipulated that an order along these lines would be satisfactory to them. The Southern Pacific Company, however, earnestly contended that such order would not meet the company's requirements, and that if train crews on a passenger or mixed train can wait twenty minutes before calling up for orders and train crews on other trains can wait forty minutes, the prompt movement of the company's trains will be seriously interfered with. The division superintendent or assistant division superintendent of each of the seven divisions of the company insisted that such order would produce demoralization in the train service in his respective division. Attention was drawn to the fact that if one conductor fails to call up from a blind siding to report his whereabouts, the failure to so report may interfere with the movement of a large number of trains, except by the slow and unsatisfactory method of flagging. These superintendents all unite in asking this Commission, in effect, entirely to disregard chapter 494, and to nullify the statute in so far as the Southern Pacific Company is concerned.

As already indicated, the Southern Pacific Company was a party to the agreement by which the statute was passed in its present form and by which the responsibility of specifying the cases or classes of cases in which the receipt, delivery and transmission of train orders directly by trainmen and enginemen might be permitted was placed upon this Commission. The Southern Pacific Company can not reasonably expect that this Commission will establish exceptions so comprehensive as, in effect, to nullify the statute. The legislature of this State has declared the State's policy in this statute, and this Commission must and will follow that policy, to the best of its ability, in passing upon the present application. At the same time, this Commission will naturally hesitate to make an order which will have the effect of interfering seriously with train movements, unless such order is necessary within the State's declared policy of promoting the safety of employees and the traveling public. This proceeding does not come before this Commission as an original proposition. It comes here as the result of a statute passed by the legislature. We must assume that the legislature was convinced that the safety of employees and the

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traveling public upon railroads required some limitation upon the receipt, delivery and transmission of train orders directly by trainmen and enginemen. The reason for the adoption of this statute, as urged by the brotherhoods, is primarily that train crews on busy stretches of railroad already have large responsibilities, that an addition to their responsibilities by compelling them to take train orders directly is dangerous, and that some breathing spell should be given them within which to secure some rest. It was apparently on this theory that the brotherhoods suggested a delay of twenty minutes in case of passenger and mixed trains and a delay of forty minutes in the case of other trains, with the right on the part of the trainmen or enginemen to call up earlier if they desired so to do. At the same time, the brotherhoods took the position that if this Commission decides that a shorter time would be sufficient, they would be satisfied. I am convinced that if a period of fifteen minutes is allowed in the case of passenger, mixed and other trains, except wrecking, relief and work trains, a sufficient opportunity will be given to overworked trainmen to recuperate. There is nothing in chapter 494 which will in any way interfere with instructions on the part of the carriers directing trainmen and enginemen to call up by telephone simply reporting their whereabouts, without asking for or taking train orders. If the dispatcher knows the whereabouts of the different trains, a short delay on the part of some one of these trains will not generally interfere with the movement of any other trains, as would be the case if a conductor or engineer remained at a siding some considerable time without any possibility on the part of the dispatcher of knowing where his train is.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and careful consideration having been given to the evidence and arguments presented therein, it is hereby ordered as follows:

1. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, F. G. Drum and Warren Olney, Jr., as receivers of Western Pacific Railway Company, Northwestern Pacific Railroad Company, and McCloud River Railroad Company, are hereby authorized to deviate from the provisions of chapter 494, of the Laws of 1915, in the following cases and classes of cases:

(*a*) Chapter 494, of the Laws of 1915, shall not apply to any person, firm or corporation operating a railroad by means of electric energy.

(*b*) Chapter 494, of the Laws of 1915, shall not apply in any case in which an engineer, fireman, conductor, brakeman or trainman voluntarily asks for a train order.

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(*c*) Chapter 494, of the Laws of 1915, shall not apply in any case of casualty or unavoidable accident, or act of God, or to any delay or wreck caused by obstructions on the track through collision or other cause, or to the failure of block signals.

(*d*) Chapter 494, of the Laws of 1915, shall not apply to prevent the receipt, delivery or transmission of train orders by engineers, firemen, conductors, brakemen or trainmen on passenger, mixed and all other trains after the expiration of fifteen (15) minutes from the time the train arrives at a train telephone; provided that the provisions of said chapter 494, of the Laws of 1915, shall not apply to the crews of wrecking or relief trains; and provided, further, that the crews of work trains may be instructed to report by telephone for orders at stated hours not exceeding three (3) per day.

2. Nothing in this order contained shall be construed as preventing any person, firm or corporation operating a railroad with more than four (4) trains each way every twenty-four (24) hours from requiring engineers, firemen, conductors, brakemen and trainmen to call up a dispatcher over the telephone to report his whereabouts, and to give and receive information not amounting to a train order.

3. This order shall become effective thirty (30) days from date, after which time this Commission's order of August 9, 1915, shall no longer be in effect.

4. At or before the effective date of this order, the carriers specified in section 1 hereof shall revoke all rules and instructions in conflict herewith.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2799.

IN THE MATTER OF THE APPLICATION OF MOUNT TAMALPAIS AND MUIR WOODS RAILWAY FOR AN ORDER EXEMPTING SAID COMPANY FROM THE PROVISIONS OF CHAPTER 494 OF THE LAWS OF 1915.

Application No. 1824.

Decided September 30, 1915.

Applicant applies for an order exempting it from the provisions of chapter 494, Laws of 1915, which prohibited trainmen from receiving or transmitting train orders by telephone or telegraph, and it appearing that applicant operates

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sufficient trains to place it within the scope of this statute only during a few months of the year, and that the lives of passengers will not be endangered by its trainmen receiving or transmitting orders, application granted.

Thomas, Beedey & Lanagan, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is an application by Mount Tamalpais and Muir Woods Railway for an order authorizing the railway to require or permit its engineers, firemen, conductors, brakemen or trainmen to receive, deliver and transmit train orders by telephone.

This company operates a railroad from Mill Valley, in Marin County, to the crest of Mount Tamalpais, with a branch line from Mesa Station to Muir Woods. The company has recently placed a dispatcher at Mesa Station. The line is operated by telephone.

During the fall and winter months, the company operates only two trains each way every twenty-four hours. During the spring and summer months more trains, up to six and at times seven each way every twenty-four hours, are operated.

Train dispatching is done carefully and in accordance with accepted standards.

As already indicated, there are only certain seasons of the year in which chapter 494, of the Laws of 1915, would be applicable in any event, and during those seasons the train crews are not burdened with work to such an extent as to imperil the safety of employees and the traveling public by a continuance of the present practice of taking train orders directly over the telephone.

In my opinion, this is one of the cases in which the Railroad Commission should permit the present practices to continue, in accord with the authority granted to this Commission by chapter 494.

I recommend the following form of order:

ORDER.

Mount Tamalpais and Muir Woods Railway having filed its petition asking that the Railroad Commission authorize said railway to require or permit its conductors, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone or telegraph line, any order for the movement of any of its trains, and the Railroad Commission finding that said request is reasonable and should be granted,

It is hereby ordered that said application be and the same is hereby granted, and that Mount Tamalpais and Muir Woods Railway be and the same is hereby authorized to require or permit any of its conductors, engineers, firemen, brakemen and trainmen to receive, deliver or

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transmit at any receiving or forwarding instrument of any telephone or telegraph line, any order for the movement of any train.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

Decision No. 2800, grade crossing; not printed. See end of volume.

DECISION No. 2801.

WESTERN ASSOCIATION OF SHORT LINE RAILROADS

vs.

E. M. HACKETT AND J. A. DEBARRE, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WICHITA TRANSPORTATION COMPANY.

Case No. 827.

Decided September 30, 1915.

Complainants, operating various short line railroads in western states, including California, petitions the Commission to declare defendant a common carrier and to compel it to file a schedule of rates and otherwise comply with the provisions of the Public Utilities Act. Defendant operates a line of auto busses from San Diego to Imperial Valley points, carrying freight at fixed rates although not on a regular schedule, and in answer protests the jurisdiction of the Commission over transportation companies of its nature.

Held, After a review of evidence tendered and a careful analysis of the various sections of the Public Utilities Act in which common carriers are held subject to the jurisdiction of the Commission: That the legislature in passing such act did not intend to include as public utilities auto busses, stage lines, etc., also that the Supreme Court has heretofore expressed itself as being of the opinion that the Commission could not assume jurisdiction over companies or individuals operating wagons, autos, etc., for hire; that though under the common law such companies were engaged as common carriers they could not be considered as public utilities.

Held, That the Commission has not been given jurisdiction over companies such as defendant herein. Complaint accordingly dismissed.

Clarence M. Oddie and *D. M. Swobe*, for Complainant.

Minor Moore, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

This is a test case to try out the question of the Railroad Commission's jurisdiction over motor bus lines, auto truck lines or auto stage lines

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engaged in the business of transporting freight for compensation for the general public over regular routes.

The matter comes before the Commission on complaint and on answer denying the Commission's jurisdiction. A public hearing was held in San Francisco on September 7, 1915. Evidence and argument on the question of jurisdiction were presented and the case is now ready for decision.

There is no substantial dispute with reference to the facts.

The complainant, Western Association of Short Line Railroads, is a California corporation organized by short line railroads operating steam and electric railroads in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. Sixteen of the railroads which are members of the association operate in whole or in part within the State of California.

The defendants, E. M. Hackett and J. A. Debarre, are partners doing business under the firm name and style of Wichita Transportation Company, hereinafter referred to as the Transportation company. The Transportation company is engaged in the business of carrying freight and other property for hire by means of auto trucks or motor busses between San Diego and points in the Imperial Valley, in Imperial County. The motor busses or auto trucks operated by the Transportation company move over the public highways and do not run on rails. The Transportation company advertises daily trips between San Diego and Imperial Valley points, but does not hold itself out as starting at any definite time of the day. While holding itself out as transporting general merchandise, the Transportation company will not transport explosives. The Transportation company has no printed rates but has a typewritten sheet of rates on file in its office at San Diego, which rates are quoted to persons desiring to have freight transported.

The Transportation company admits that it is a common carrier of freight, as the term "common carrier" is understood at common law and as the term is defined in section 2168 of the Civil Code in so far as applicable to the transportation of freight, but contends that it is not a common carrier or a public utility as those terms are defined by the Public Utilities Act and is not subject to the jurisdiction of the Railroad Commission.

Complainant asks that this Commission make its order requiring the Transportation company to file its schedules of rates and charges, and in all other respects to comply with the provisions of the Public Utilities Act.

In addressing myself to the law applicable to these facts, I shall refer first to the provisions of the Constitution of California and then to the provisions of the Public Utilities Act of this State which have been referred to as bearing on the question now under consideration.

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Section 17 of article XII of the Constitution of California provides in part as follows:

> "All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control."

Section 22 of article XII of the Constitution of California creates the Railroad Commission, and provides in part as follows:

> "Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers, or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff."

There is no contention herein that the Transportation company is either a railroad or a canal company. The words "transportation companies," as used in these constitutional provisions, were construed by the Supreme Court of this State in *Board of Railroad Commissioners* vs. *Market Street Railway Company*, 132 Cal. 677. The court held that a street railway company in San Francisco was not subject to the jurisdiction of the Board of Railroad Commissioners. At page 684, the court continued:

> "Companies engaged in draying, running freight wagons, delivery wagons, delivering parcels, teaming and running elevators, are engaged in the business of 'transportation'; but it surely could not be contended that they are subject to the jurisdiction of the Railroad Commission. The people of the state would not have agreed to pay the salaries and expenses of the Railroad Commissioners, selected from different geographic sections of the state, for the purpose of regulating the charges of the 'United Carriage Company' of San Francisco. Yet it is a transportation company."

Complainant's chief reliance, in so far as constitutional provisions are concerned, is on section 23 of article XII of the Constitution of California, as amended on October 10, 1911. This section provides, in part, as follows:

> "Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, trans-

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mission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the Railroad Commission as may be provided by the legislature, and every class of private corporations, individuals, or association of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The Railroad Commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the Railroad Commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

Complainant draws particular attention to the fact that "every common carrier" is declared to be a public utility, and insists that the question at issue is thus conclusively decided in its favor. It is unquestionably true, as already indicted, that the Transportation company is a common carrier at common law and that the Constitution itself has declared that each common carrier is a public utility, but it is equally true that this section of the Constitution distinctly declares that the corporations and persons who are declared to be public utilities shall be subject only to such control and regulation by the Railroad Commission "as may be provided by the legislature." It is distinctly provided that the Railroad Commission shall have and exercise "such" power and jurisdiction to supervise and regulate public utilities "as shall be conferred upon it by the legislature." It would seem to be too clear for argument that the Railroad Commission's power over public utilities is expressly limited to the powers which may be conferred upon it by the legislature and that in order to determine whether or not the Transportation company is subject to the jurisdiction of the Railroad Commission, it is necessary to look to the statutes which have been enacted by the legislature. Complainant argues that even if common carriers such as the Transportation company herein are not included in the Public Utilities Act, it is nevertheless the duty of the Railroad Commission to exercise jurisdiction over this kind of common carrier for the reason, simply and solely, that section 23 of article XII of the Constitution includes all common carriers as public utilities. In my opinion, it might be said with equal logic that if the Public Utilities Act had omitted gas companies, electric companies or water companies, it would nevertheless be the duty of the Railroad Commission to exercise jurisdiction over such companies because they are defined by the Constitution to be public utilities. I can not believe that any

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such construction can be correct. The Supreme Court of this State passed upon a similar contention in the *Market Street Railway Company* case, *supra*. In that case, as already indicated, the Constitution of this State provided that all transportation companies should be common carriers subject to legislative control and that the Board of Railroad Commissioners should have the power to establish rates of charges for the transportation of passengers and freight by all transportation companies. Although it was perfectly clear that a street railway is a transportation company, the Supreme Court nevertheless held that a street railway was not subject to the jurisdiction of the Board of Railroad Commissioners, for the reason that the legislature in defining the jurisdiction of the Board of Railroad Commissioners, in the act of April 15, 1880, had defined transportation companies in such a way as to exclude street railways. In other words, the Supreme Court of this State upheld the right of the legislature to make a specific definition of the classes of corporations and persons who should be subject to the jurisdiction of the Board of Railroad Commissioners, even though the Constitution had conferred upon the legislature the right to provide supervision and regulation by the Board of Railroad Commissioners for classes of corporations and persons in addition to those which were specifically designated in the act of the legislature prescribing the powers and duties of the Board of Railroad Commissioners.

Attention has already been drawn to the fact that the Supreme Court further indicated its view that companies engaged in draying, running freight wagons, delivery wagons, delivering parcels, teaming, and running elevators, although clearly transportation companies, nevertheless were not subject to the jurisdiction of the Board of Railroad Commissioners.

I am of the opinion that it is not sufficient for complainant to draw attention to the fact that the Constitution of this State has declared that persons engaged in business such as that conducted by the Transportation company are common carriers and public utilities,, and that the Constitution has given the legislature the power to provide for regulation and supervision thereof by the Railroad Commission. In my opinion, the complainant must go further and must show that the legislature has exercised the right conferred upon it by the Constitution and has actually included common carriers of this character within the public utilities over which the Railroad Commission has been given jurisdiction in the Public Utilities Act or through other legislative enactment.

In this connection, complainant contends that the Transportation company comes within the provisions of subsections (*k*), (*l*) and (*bb*) of section 2 of the Public Utilities Act.

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Section 1 of the Public Utilities Act reads as follows:

> "This act shall be known as the 'public utilities act' and shall apply to the public utilities and public services herein described and to the commission herein referred to."

In this section the legislature clearly shows that it intended that the Railroad Commission's jurisdiction should be limited to the public utilities and public services described in the act.

Section 2 defines the principal terms used in the Public Utilities Act. In each case the term to be defined is followed by the words "*when used in this act,*" thus showing that the legislature intended to escape the confusion which might result from the fact that a particular term might be used in different senses in general parlance and to specify beyond a doubt the exact sense in which the term is to be understood whenever it appears in the Public Utilities Act.

Section 2 (*c*) reads as follows:

> "The term 'corporation,' when used in this act, includes a corporation, a company, an association and a joint-stock association."

Section 2 (*d*) reads as follows:

> "The term 'person,' when used in this act, includes an individual, a firm and a copartnership."

After defining a number of terms on which neither party in this proceeding relies, section 2 proceeds, in subsection (*k*) as follows:

> "The term 'express corporation,' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state."

Some contention is made herein that the Transportation company is an "express corporation," as that term is thus defined. In my opinion, this contention is not borne out by the definition. In order to have an "express corporation" as defined in the act, it is necessary to find a "corporation" or "person," as those terms are defined, who in turn are engaged in transporting freight, merchandise or other property for compensation, "on the line of any common carrier or stage or auto stage line within this state." A company such as Wells Fargo & Company comes within this definition. It is engaged in the business of transporting freight, merchandise and other property for compensation on the line of most of the railroads in California, and also on the line of a number of stage and auto stage lines. The Trans-

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portation company herein, however, is not engaged in transporting freight, merchandise or other property on the line of any other corporation or person. Only one corporation or person transporting freight, merchandise or other property is here involved, and this corporation or person is the Transportation company itself.

Subsection (*l*) of section 2 of the act reads as follows:

> "The term 'common carrier,' when used in this act, includes every railroad corporation; street railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing-room car, freight, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading and every other car corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating for compensation within this state; and every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this state or upon the high seas, over regular routes between points within this state."

Attention should be drawn to the fact that the term "common carrier" is specifically defined for the purposes of the act to include railroad corporations, street railroad corporations, express corporations, car corporations of various kinds and corporations and persons operating vessels in the limited class of cases designated in the definition. There is no contention herein that the transportation company falls within any of the classes of corporations and persons designated in the definition except possibly within the words "and every other car corporation or person." It seems clear, however, that the word "car" is here an adjective and that it applies both to the word "corporation" and the word "person." Attention has already been drawn to the definition of the terms "corporation" and "person," which terms are apparently so defined as to include between themselves all private individuals and combinations of private individuals in whatever form, engaged in the character of business covered by the act. The words "every other car corporation or person" as used in subdivision (*l*) of section 2 seem clearly intended to cover every other individual or combination of individuals in any form operating so-called "car companies." All the other companies included between the two semicolons which set off this part of the definition of the term "common carrier" refer to different kinds of so-called "car companies," this being a well known term referring to companies owning or operating cars for various purposes over the lines of railroads and street railroads. These words have never been applied, as far as I have been able to ascertain, to companies whose vehicles do not move over the rails of railroad or street railroad companies.

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Subsection (*bb*) of section 2 of the act, as amended on June 14, 1913, reads in part as follows:

> "The term 'public utility,' when used in this act, includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger and warehouseman, whether such service is performed for or the commodity delivered to the public or any portion thereof."

Attention is drawn to the fact that this subsection as originally enacted in 1911 contained after the words "wharfinger and warehouseman" the words "as those terms are defined in this section." The argument is made that the omission of these words in the subsection as amended on June 14, 1913, must be construed to show an intention of the legislature to disregard all the definitions which had been set forth with such pains in the earlier portion of the section, and to leave the door open to the inclusion as "public utilities" of many classes of corporations and persons which are clearly not included in the definitions set forth in the preceding portions of section 2 of the act. I can not believe that any such intention can be imputed to the legislature. The words "as those terms are defined in this section," as originally used in subsection (*bb*) of section 2 of the act, were clearly surplusage and were apparently inserted out of a superabundance of caution. Each of the terms included in this subsection had already been defined, and in each case the definition had expressly stated that the term, *whenever used in the act,* should have the meaning specifically set forth in the definition. Hence, it was entirely unnecessary to insert in subsection (*bb*) the words "as those terms are defined in this section." If any intention is to be imputed to the legislature in connection with the omission of these words, it would seem more reasonable to say that the legislature concluded that these words were surplusage, and that for this reason, when the act was revised the words were omitted.

Attorney for complainant in Case No. 835, *United Railroads of San Francisco* vs. *Peninsula Rapid Transit Company*, drew attention, upon the argument in that case, to the use of the word "includes" in each of the definitions in section 2, except the definition of the words "commission" and "commissioner." He drew attention to the fact that in certain cases the word "includes" is a word of enlargement and not of limitation, and contended that classes of corporations and persons other than those specified in the various definitions may be included within the terms as used in the act and that this Commission may be compelled to take jurisdiction over such additional classes of corporations and persons. The meaning to be given to the word "includes" must depend in each case upon the context. Cases in which the word has been held to be a word of enlargement, rather than limitation, have generally been

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cases in which the word follows words of comprehensive significance, such as "*all* personal property, including furniture"; "*all* necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, commissions, the compensation of referees, and the expense of printing papers on appeal," and "*all* other corporate property, real and personal, of said railroad company, including all depots, warehouses or structures." In cases of this character, it seems clear that the word "includes" can not properly be construed to limit the words of general significance which it follows:

A careful perusal of section 2 of the Public Utilities Act would seem to show clearly that the legislature intended, in defining each class of public utility, to specify the particular classes of corporations and persons, no more and no less, which should be referred to whenever the particular kind of utility is mentioned in the act. The limitations and qualifications which are found in certain of the definitions are clearly of no avail unless this conclusion is sound. Thus, in the term "common carrier" the limitation of this Commission's control with reference to vessels to those which are "regularly" engaged in the transportation of persons or property "over regular routes between points within this state," is of no avail as against other vessels which may be held to be common carriers at common law, if complainant's contention is correct. Again, the very obvious intention of the legislature, in subsection (*p*) of section 2, to limit the definition of the term "gas corporation," so as to exclude cases in which gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants, and not for sale to others, will fail if the definition is held to be merely illustrative. The same observation follows with reference to the definition of the term "electrical corporation" in subsection (*r*) of section 2 of the act. The same observation applies to the definition of the term "warehouseman" in subsection (*aa*) of section 2, in which subsection the legislature clearly intended to define the term so as to include certain warehousemen as to which regulation was thought to be necessary and to exclude other warehousemen.

It may reasonably be presumed that the term "common carrier" was defined in view of the difficulties which had already arisen and which had been pointed out by the Supreme Court of this State. In the *Market Street Railway Company* case, *supra*, the Supreme Court had pointed out that the people of the State could not have been presumed to have intended to confer jurisdiction upon the Board of Railroad Commissioners over companies engaged in draying, running freight wagons or delivery wagons, in delivering parcels, in teaming or in running elevators. The legislature may well have had in mind the man who maintains an express wagon on the street corner and who holds

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himself out as willing to haul trunks or other merchandise for any one who will pay him his regular rates. The legislature may be presumed to have considered the cases of van and drayage companies, teamsters, taxicabs, and small gasoline launches, many of which, notwithstanding their diminutive size and roving habits, are nevertheless clearly common carriers at common law. The legislature may well have concluded that certain of these carriers were not in need of public regulation at all, and that as to others, such regulation as was necessary might be exercised by the local authorities. Subsection (*l*) of section 2 of the act shows, to my mind, conclusively that the legislature intended to specify the particular kinds of common carriers at common law over which it thought regulation and supervision by the Railroad Commission to be necessary and expedient, and to omit all the others. I know of no language which the legislature could have adopted which could have more clearly expressed this very obvious purpose.

Referring specifically to motor trucks, auto bus lines or auto stage lines, such as the Transportation company, there is evidence in other sections of the act that the legislature could not have intended to include them under the term "common carrier" or the term "public utility," as used in the act. In defining the term "express corporation," the act refers to corporations or persons transporting freight, merchandise or property for compensation on the line "of any common carrier *or stage or auto stage line*" within this State. If the term "common carrier" as used in the act already included a stage or auto stage line, it obviously was entirely unnecessary to add these words in defining the term "express corporation." The term "common carrier" would alone have been sufficient. It is obvious that the legislature had in mind the fact that express companies in this State, such as Wells Fargo & Company, while operating principally over the lines of railroad corporations and vessels, also operate to some extent over the lines of certain of the stage and auto stage lines within the State. As stage and auto stage lines were not subject to the jurisdiction of the Railroad Commission except in the one respect hereinafter to be mentioned, Wells Fargo & Company would have been relieved to that extent from the jurisdiction of the Railroad Commission, under the definition of the term "express corporation," if the words "or stage or auto stage lines" had not been added to the words "common carrier." The addition of these words shows to my mind conclusively that they were not included in the term "common carrier." This definition of the term "express corporation" was retained when the Public Utilities Act was amended on June 14, 1913, at which time the change in the definition of the term "public utility," hereinbefore referred to, was made.

The only other section of the Public Utilities Act in which the words "stage or auto stage lines" are used is section 33, which section refers

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to through routes and joint rates. After giving the Railroad Commission power to establish through routes and joint rates "over two or more common carriers," the legislature added the following sentence to the section:

> "The commission shall have the power to establish and fix through routes and joint rates, fares or charges over common carriers and stage or auto stage lines and to fix the division of such joint rates, fares or charges."

If the term "common carrier" included stage or auto stage lines, it was entirely unnecessary to add this sentence, for the reason that authority to establish through routes and joint rates applicable to stage and auto stage lines would already have been conferred in the earlier portion of the section. I direct particular attention to the fact that the words used are "over common carriers *and* stage or auto stage lines." The use of the word "and" shows very clearly that in mentioning "stage or auto stage lines" the legislature intended to add to "common carriers" something which was not included within those words as defined and used in the Public Utilities Act. A careful examination of the entire Public Utilities Act convinces me that the legislature intended to confer jurisdiction upon the Railroad Commission over stage and auto stage lines only in the one respect set forth in section 33 of the act, namely, in the matter of through routes and joint rates.

That the legislature could have conferred a more extended jurisdiction over these agencies is provided for by the Constitution itself, and is clear on principle: *Munn* vs. *Illinois*, 94 U. S. 113; *German Alliance Insurance Co.* vs. *Lewis*, 233 U. S. 389. It is equally obvious to my mind that the legislature, for good and sufficient reasons, intended not to burden the Railroad Commission with jurisdiction over any class of common carrier not specifically designated in the Public Utilities Act.

Some light is shed on this subject by certain proceedings before the legislature of 1915. It is well known that certain of the short line railroads and street railroads caused the introduction of a number of bills amending the Public Utilities Act so as to include persons and corporations operating motor vehicles or automobiles upon the highways for the transportation of persons for hire. One of these bills, being Senate Bill No. 206, declares that each such corporation and person is "a common carrier and subject to the provisions of the Public Utilities Act." Obviously, it was entirely unnecessary to introduce such bill if motor vehicles and automobiles carrying persons for hire upon the public highways are already included within the Public Utilities Act. It is equally well known that representatives of the short line railroads, apparently reaching the conclusion that the legislature was not yet

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prepared to confer these additional responsibilities upon the Railroad Commission, caused the introduction of another bill for the purpose of amplifying the jurisdiction of the local authorities so as to place them in a position to exercise more complete jurisdiction over the jitney bus and motor truck, at least until the extent, permanency and seriousness of the problem might be more definitely established. The fact that representatives of the short line railroads appeared before the legislature in advocacy of this latter measure would seem to show quite clearly that, in their opinion at that time, jurisdiction did not vest in the Railroad Commission. While these matters are not conclusive of the legal question whether jurisdiction does or does not vest in this Commission, they are referred to as illustrative of the general attitude and belief of the short line railroads in this matter.

Reference was made in the argument herein to the decisions of a number of other state railroad or public service commissions on the question whether such commissions have jurisdiction over so-called jitney busses and motor trucks in their respective states. Such decisions must be based upon the particular statutory provisions of the respective states and are of but little assistance in California. In *Georgia Railway and Power Company* vs. *Jitney Bus Company,* decided by the Railroad Commission of Georgia on June 8, 1915, it appears that the statute conferring jurisdiction upon the railroad commission uses the words "all common carriers," without any limitation whatsoever. Under such a statute, obviously the railroad commission would have jurisdiction over jitney busses and motor trucks carrying persons or property for compensation for the public. In *In re Automobile Traffic on Auto Stage Lines,* decided by the Corporation Commission of Arizona on June 15, 1915. The corporation commission took jurisdiction over auto stage lines, but no reference is made in the decision to the statute defining the jurisdiction of the corporation commission. Apparently no objection to the commission's jurisdiction was presented by any party to the proceeding. This was a case in which one auto stage line asked the commission to assume jurisdiction over itself and other lines of similar character. In *Jacksonville Railway Company* vs. *O'Donnell,* decided on June 3, 1915, the Illinois Public Utilities Commission assumed jurisdiction over jitney busses but did not in any way refer to the statute defining the commission's jurisdiction. In *In re Regulation and Control of Automobiles and Jitney Busses operating as Common Carriers,* decided by the Maryland Public Service Commission on May 13, 1915, it appears that the legislature of Maryland, in 1914, amended the public service commission law by specifically providing that the term "common carrier" when used in the law, should include all automobiles, transportation companies, and all persons and associations, whether incorporated or otherwise, operating automobiles or

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motor cars or motor vehicles for public use in the conveyance of passengers or property within the State of Maryland. In view of this amendment of the public service commission law, there could be no reasonable doubt that jitney busses were subject to the jurisdiction of the Public Service Commission. These are the only cases to which I have been referred as holding that jitney busses or motor trucks have become subject to the jurisdiction of some state railroad or public service commission.

After a careful review of the Public Utilities Act and of each argument which has been presented by the complainant herein, I am driven irresistibly to the conclusion that this Commission has not been given jurisdiction over companies such as the Transportation company herein, and that this proceeding must be dismissed for lack of jurisdiction.

If the legislature hereafter confers upon the Railroad Commission jurisdiction in any respect over jitney busses or motor busses or any class thereof, this Commission will, of course, promptly exercise, to the best of its ability, the jurisdiction thus conferred. In the mean time, this Commission would properly be subject to the most severe criticism if it undertook to exercise jurisdiction over jitney busses and motor trucks when we are convinced that the legislature has not conferred and has not intended to confer such jurisdiction upon this Commission.

I submit the following form of order:

ORDER.

A public hearing having been held in the above entitled complaint and the Railroad Commission finding that it does not have jurisdiction,

It is hereby ordered that said complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of September, 1915.

DECISION No. 2802.

IN THE MATTER OF THE APPLICATION OF SWEETWATER WATER COMPANY FOR AN ORDER AUTHORIZING AND PERMITTING IT TO INCREASE RENTALS, TOLLS AND CHARGES FOR WATER IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, OUTSIDE OF THE LIMITS OF INCORPORTED TOWNS AND CITIES.

Application No. 312.

Decided October 2, 1915.

Applicant applies for permission to increase its water rates, contending that under the present schedule its revenues are insufficient to provide operating expenses

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and a fair return on the value of its system. Protestants contend that applicant is not entitled to a return on its plant value considering the fact that such system was constructed to enhance the value of the property which it serves, which was sold at a considerable profit. In this connection the Commission holds that irrespective of the fact that a water plant is constructed primarily for the purpose of increasing realty values, which real estate was afterwards sold at a profit, the company building the system is still entitled to a return on its reasonably useful value and that profits made on realty can not be considered as detracting from the value of the water plant. However such value shall not include unnecessary or lengthy extensions which would not otherwise have been constructed other than for the purpose of enhancing property values. That there are a number of such extensions in connection with this system and in establishing a value for rate fixing purposes allowances will be made accordingly.

Held, That applicant's showing has justified an increase in rates, and that as a utility can not be expected to render the efficient service demanded by its consumers under non-compensatory rates, the schedule herein established is just and reasonable. This schedule includes a minimum monthly charge of $1.00, entitling consumer to 400 cubic feet; next 1,600 cubic feet, 15 cents per 100; for irrigation purposes above 2,000 cubic feet, 2 cents per 100; other than irrigation, over 2,000 cubic feet, 7½ cents per 100. Meters and service extensions to be made at the expense of the company. Such rates to become effective November 1, 1915.

F. S. Jennings and *A. H. Sweet*, for Applicant.

Tyndale Palmer and *E. T. Smith*, for Protestants.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application by Sweetwater Water Company for authority to charge increased water rates. Applicant supplies water for both irrigation and domestic uses to the incorporated cities of National City and Chula Vista and to the unincorporated territory called Sweetwater Valley, and a part of the Rancho Ex Mission of San Diego, all being in San Diego County.

The water rates in National City and Chula Vista were not within the jurisdiction of this Commission at the time of the hearing, therefore, the rates herein found to be reasonable will be made to apply to all rates charged by applicant except the rates charged for water delivered in National City and Chula Vista.

The rates now in effect outside of the cities of Chula Vista and National City were fixed by the board of supervisors of San Diego County and in these cities the rates were fixed by the respective boards of trustees. These rates are as follows:

In the county for irrigating acre property: For each acre, $7.00 per annum for a maximum of 350,000 gallons per acre. Excess 2 cents per 1,000 gallons.

For dwellings, business houses, lot and block property: Flat rates with an option on the part of the company to install meters, with a meter rate of 15 cents per 1,000 gallons. If meter installed at written request of consumer, $5.00

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required from consumer to cover cost of setting meter, and company entitled to collect from such consumer specific amounts for maintenance and repair thereof.

The rates in the city of Chula Vista are:

Domestic—30 cents per 1,000 gallons.
Manufacturing—8 cents per 1,000 gallons.
Sprinkling—10 cents per 1,000 gallons.
Irrigation—Lot and block 15 cents per 1,000 gallons.
Minimum on above uses, $1.00 per month.
Irrigation acreage—Minimum per acre per year, $7.00 for 350,000 gallons to 400,000 gallons per acre at 2 cents per 1,000 gallons. Above 400,000 per acre, 5 cents per 1,000 gallons.

The rates in National City are:

Domestic—25 cents per 1,000 gallons.
Manufacturing—10 cents per 1,000 gallons.
Irrigation—Lot and block, under 6,000 gallons, 25 cents per 1,000 gallons. Above 6,000 gallons, 10 cents per 1,000 gallons.
Minimum on above uses, $1.00 per month.
Irrigation Acreage—$3.50 per year minimum for 100,000 gallons. Above 100,000 gallons, 2½ cents per 1,000 gallons.

Applicant asks for an increase of its rate to 7 cents per 1,000 gallons for irrigation and suggests that if this request is granted it may not be necessary to raise the other rates.

Consumers appeared by counsel who introduced considerable evidence and filed briefs protesting vigorously against the granting of this application.

Applicant's position is that it is entitled to maintenance and operating expenses, depreciation and a fair return upon the present value of its plant. It introduced in evidence statements from its books purporting to show the original cost of this plant and also introduced in evidence a complete inventory and estimate of value made by engineers on its behalf. Applicant claims as original cost the following:

Pipe system (74.64 miles) to September 30, 1912		$630,254 57
Sweetwater Water Dam—		
Original structure	$256,190 87	
Addition made in 1895	17,423 80	
Addition made in 1911	198,873 49	
		472,488 16
Sweetwater reservoir lands		142,249 51
Meters		25,620 05
Pump plants		33,835 18
Equipment		3,491 70
Buildings		3,298 91
Miscellaneous		701 86
Total cost to September 30, 1912		$1,311,966 94

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Applicant claims a total present value of plant amounting to $1,252,-999.43. This total is made up as follows:

Adopting the depreciated reproduction cost found by P. E. Harroun, then the hydraulic engineer of this Commission, of	$874,149 43
There is added for under estimate of lands in the reservoir site	40,000 00
For under estimate for the reproduction cost of concrete work in the dam	17,000 00
For under estimate of present value of the dam itself by reason of attributing to the reservoir a life of only 100 years	25,000 00
For what may be called comprehensive going concern value of the applicant's property	186,850 00
For value of riparian rights on the 6 or 7 miles of Sweetwater River below the dam	85,000 00
For the right to impound storm water	25,000 00
Total	$1,252,999 43

Mr. Harroun after deducting certain charges, such as the salary of the president who lived out of the State and performed no useful services for the company, and also expenses of the Boston office, found maintenance and operating expenses to be, per annum, $22,438.00 and depreciation $24,989.00. If, in addition to this, applicant is allowed 6 per cent on its claimed present value, the result would be as follows:

Maintenance and operation	$22,438 00
Depreciation	24,989 00
Interest	75,178 00
Total charges to be paid by consumers	$122,605 00

As the total gross income reported by the company for the year ending December, 1914, is, in round numbers, $66,000.00, it will be seen that if applicant's claims are allowed the consumers would have to pay such rates as would produce practically double the amount of income as is now received by the company.

The principal attack of the consumers is made upon the claim of the company to full consideration of the present value of its plant. The consumers claim that the value of this plant was fixed by a sale of this and other property, then in receivership, which sale was made in 1897 for a total price of $889,163.33, and is contended that the value of the water plant was considered to be one-fourth of this sum, or $222,290.84. Therefore, it is urged the value which should be allowed applicant is this sale price together with the cost of such additions and betterments as may have been made since.

Furthermore, at the hearing consumers' counsel offered to prove that this water system was built solely for the purpose of making possible the sale of large amounts of land owned by the persons who built the system; that the cost of this water system was added to the price at

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which the land was sold; that the land was sold for profits aggregating several million dollars, and that this should be considered in passing upon this application.

It appears that this water system was originally constructed by the San Diego Land and Town Company, a Kansas corporation, which also owned large tracts of land, to irrigate which this system was built. The construction was commenced in 1886 and the plant was operated by this company up to 1895, when the company went into the hands of a receiver who managed the property until the 14th day of June, 1897, when all of the properties of the San Diego Land and Town Company of Kansas were sold by the receiver to a committee of the creditors of said company for $889,163.33. This sale was approved by the court on July 7, 1897, and thereafter the committee of creditors transferred this property to a corporation organized for that purpose, called San Diego Land and Town Company, organized under the laws of the State of Maine. Thereafter, said last named corporation transferred the present water system to a new corporation, called Sweetwater Water Company, organized under the laws of the State of Maine, which company is applicant herein. The consideration for this last sale was $1,200,000.00 par value of the capital stock of the water company.

On October 16, 1897, the board of supervisors of San Diego County fixed rates to be charged by San Diego Land and Town Company of Maine for water furnished by this system. In fixing these rates, the supervisors found a plant value of $350,000.00. An appeal was made to the courts against this rate and the matter finally arrived in the Supreme Court of the United States, where in the case of *San Diego Land and Town Company* vs. *Jasper*, 189 U. S. 439, it was held that these rates were not confiscatory. Among other things, the court there states:

> "The property of the company and its predecessor consisted not only of the waterworks but of a large amount of land. On the evidence the waterworks may be estimated at about a quarter of the total value * * *. The mortgage was foreclosed and all the property was sold * * * for the sum of $889,163.33 * * *. The purchasers organized the present corporation, and the above mentioned sum is the cost of the land and the waterworks to it. The appellant protests that this is not a fair value for the property of the company. We doubt whether it is not a liberal allowance. The officers of the two companies at the time thought that they got more than they could have got in any other way. But at all events, it is decided that the price is evidence, we might say more evidence than the original cost. (*Dow* vs. *Beidleman*, 125 U. S. 680.)"

We are urged by counsel for consumers to hold that the decision of this court fixes for all time the value of this property as of the time considered, with the cost of additions and betterments made since.

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It is not necessary to pass on this contention because if the value contended for by consumers with additions and betterments made since be taken, the rates herein prescribed are reasonable.

At the hearing the offer of consumers' counsel to produce evidence of the profits made by the builders of this water system in the sale of land was refused by me, and I believe this ruling should be sustained at this time. To hold that profits made out of the sale of land, where a water system has been built primarily for the purpose of serving such land, should be offset against any value of the water system when it comes to fixing rates, would be to deny the owners of the water system the right of property therein.

Of course if there had been any conveyance of the water property to the purchasers of land then it should be held that the consumers or land owners owned the system. But there is no evidence in this proceeding of any such conveyance. In fact, the evidence is that the title and possession of Sweetwater Water Company to this system is undisputed by anybody. Therefore, under the law, this Commission must treat the water plant as belonging to applicant, and profits made in a related enterprise can not be used, in my judgment, to reduce the rates fixed for the service of water.

However, the whole history of this plant should be considered in arriving at rates. I do not believe that under the circumstances disclosed here applicant is entitled to a return upon the full cost or reproduction value of this plant.

In the first place, it is clear from the evidence that the plant was designed and built primarily to produce water to lands owned by its builders, and as a result of this, the distribution system was extended considerably beyond where it would have been if the system was designed only to serve consumers other than purchasers of land from these promoters.

Having built the system and carried it completely over their land holdings, the promoters sold parcels of land from time to time and we find present consumers who were purchasers of this land scattered over this system. Hence the consumers are not reasonably compact but are widely scattered, resulting in some instances in pipes being maintained for long distances without intermediate use, in order to serve consumers at the ends thereof.

Of course, it can not now be stated that a considerable portion of these pipes are not used and useful because a main pipe line with one consumer on the end, strictly speaking, would be useful for his purpose. But, on the other hand, I believe it fair to all concerned to consider this condition in determining the matter of rates.

It is evident that applicant has justified an increase in rates, and I recommend an increase, not only in justice to the company, but also

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to make it possible to produce and maintain good service to the consumers.

Under existing rates I do not believe there is any inducement for the company to produce good service, and while the present manager is credited by consumers with being fair and efficient, it is apparent that the present service can not be bettered, or perhaps even maintained at its present standard, unless the revenue is increased.

The evidence herein shows that at times there has been a shortage of water and at other times conditions creating great doubt as to the sufficiency of the supply. It would, of course, be of great benefit to the consumers to have their supply of water put beyond doubt and while the evidence in this case does not justify a conclusion as to the best means of bringing this about, the company may be able to devise a plan whereby the water supply may be increased or safeguarded. If such a plan is put into effect the Commission may properly give consideration to a revision of the rates in view of the better service provided.

In fixing rates herein a conclusion has been reached as to reasonable rates which might be charged over the whole system and these rates have been applied to the territory affected by this decision.

The rates set out in the following order are made uniform and meters and service connections are to be installed at the expense of the company. Meters to be installed at the option of the company or the consumer.

Herewith a form of order:

ORDER.

Application having been made by Sweetwater Water Company for an order authorizing it to increase its rates and charges for water served consumers, and a public hearing having been had and the matter being submitted for the consideration of the Commission,

It is hereby found as a fact by the Railroad Commission of the State of California that the rates now charged by Sweetwater Water Company for the service of water to its consumers outside National City and Chula Vista are unjust and unreasonable wherein they differ from the rates hereinafter found to be just and reasonable rates.

It is hereby further found as a fact that the following rates are just and reasonable rates to be charged by Sweetwater Water Company for water served its consumers outside of National City and Chula Vista, to wit:

For 400 cubic feet or less per month, $1.00.
The next 1,600 cubic feet, 15 cents per 100 cubic feet.
All use for irrigation purposes above 2,000 cubic feet, 2 cents per 100 cubic feet.
All use other than irrigation above 2,000 cubic feet, 7½ cents per 100 cubic feet.
Meters to be installed at the option of either the company or the consumer.
Meters and service connections to be installed at the expense of the company.

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Basing its order upon the foregoing findings of fact and the further findings of fact contained in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that Sweetwater Water Company be allowed to put into effect on November 1, 1915, the rates herein just above found to be reasonable. The present flat rates to be continued as they now are, provided that prior to November 1, 1915, Sweetwater Water Company shall file with this Commission a schedule embodying the rates herein authorized.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2d day of October, 1915.

DECISION No. 2803.

IN THE MATTER OF THE APPLICATION OF MONTEREY COUNTY WATER COMPANY FOR PERMISSION TO SELL THAT PORTION OF ITS CANAL "B" LYING BETWEEN THE INTAKE ON THE SAN LORENZO RIVER AND WHERE SAID CANAL CROSSES SAN LORENZO COUNTY ROAD, AND TO SELL THE HEADGATE SITE FOR SAID CANAL.

Application No. 1784.

Decided October 5, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Monterey County Water Company having on October 4, 1915, made written request that this application be dismissed,

It is hereby ordered that this application be and the same is hereby dismissed.

Dated at San Francisco, California, this 5th day of October, 1915.

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DECISION No. 2804.

IN THE MATTER OF THE APPLICATION OF LONG BEACH CONSOLIDATED GAS COMPANY FOR AN ORDER AUTHORIZING IT TO ISSUE, SELL AND DELIVER ONE HUNDRED OF ITS FIRST MORTGAGE BONDS OF THE DENOMINATION OF ONE THOUSAND DOLLARS EACH.

Application No. 1526.

Decided October 5, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

Whereas, this Commission in Decision No. 2251, dated March 22, 1915, authorized Long Beach Consolidated Gas Company to issue and sell $100,000.00 of its first mortgage 6 per cent bonds; and

Whereas, said decision provided that certain of said bonds should only be issued after applicant had submitted to this Commission a detailed statement of the extensions and additions proposed to be made to its gas plant and distributing system, and had received from this Commission a supplemental order approving the use of the proceeds from the sale of said bonds for such purposes; and

Whereas, Long Beach Consolidated Gas Company has now filed a supplemental application for an order authorizing it to issue and sell $17,000.00 face value of its 6 per cent thirty-year gold bonds, numbers 519 to 535, both inclusive, and to use the proceeds for partially reimbursing its treasury for moneys actually expended therefrom in payment for certain extensions and additions to its gas plant and distributing system, as more fully set forth in Exhibit "A" attached to said supplemental application, and it appearing that the causes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Long Beach Consolidated Gas Company be and it is hereby given authority to issue $17,000.00, face value, of its 6 per cent thirty-year gold bonds, numbers 519 to 535, both inclusive, under its trust indenture to Los Angeles Trust and Savings Bank, dated November 1, 1910.

It is hereby further ordered that the provisions of this Commission's order in Decision No. 2251, dated March 22, 1915, shall remain in full force and effect, in so far as not in conflict with the order herein.

The foregoing first supplemental order is hereby approved and ordered filed as the first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1915.

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DECISION No. 2805.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING IT TO ISSUE TO THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS, ITS BONDS BEARING INTEREST AT THE RATE OF SIX PER CENT PER ANNUM.

Application No. 1525.

Decided October 5, 1915.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FOURTH SUPPLEMENTAL ORDER.

Whereas, this Commission by an order dated February 27, 1915 (Decision No. 2182), authorized Santa Barbara Gas and Electric Company to issue and sell $100,000.00 of the face value of its first mortgage 6 per cent thirty-year gold bonds; and,

Whereas, said order dated February 27, 1915, provides that bonds to the face value of $62,000.00 shall be issued and sold only after applicant has obtained a supplemental order specifically authorizing the use of the proceeds to be obtained from the sale of said bonds; and

Whereas, this Commission has heretofore by supplemental orders authorized applicant to issue and sell bonds to the amount of $36,000.00; and,

Whereas, Santa Barbara Gas and Electric Company has now filed a supplemental application for an order authorizing it to issue and sell $13,000.00 face value of first mortgage 6 per cent thirty-year gold bonds to defray the cost of additions and betterments as shown in Exhibit "A" attached to the fourth supplemental application; and,

Whereas, it appears that the purposes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Barbara Gas and Electric Company be and it is hereby given authority to issue $13,000.00 face value of its first mortgage 6 per cent thirty-year gold bonds, said bonds bearing numbers 1164 to 1176, both inclusive, and being secured by a trust indenture dated July 1, 1911, and executed to Los Angeles Trust and Savings Bank.

It is hereby further ordered that the provisions of this Commission's order dated February 27, 1915 (Decision No. 2182), and the amendments thereto, shall remain in full force and effect except as modified and amended by this fourth supplemental order.

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The foregoing fourth supplemental order is hereby approved and ordered filed as the fourth supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1915.

DECISION No. 2806.

J. L. MURPHEY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 851.

Decided October 5, 1915.

Complainant owning a large ranch approximately three miles southeast of Turlock on the line of defendant company, petitions the Commission to compel defendant to install a spur track for the convenience of shipments originating on his ranch and adjacent farms, agreeing to stand a proportionate amount of the cost of such construction. Defendant refuses to construct the desired spur, contending that there is a siding at Delhi, only a short distance away, which adequately serves the needs of this district, and that to construct an additional spur would only tend to increase the danger of operating the many main line trains passing this point.

Held, After investigation it appears that the shipments made by defendant does not justify the construction of an additional spur as petitioned for, and that such construction if carried out would necessitate a rearrangement of defendant's block signal system at this point, entailing considerable expense, also that as complainant is adequately served by the siding at Delhi which only necessitates a short wagon haul, complaint dismissed without prejudice.

J. L. Murphey, for Complainant.

George D. Squires, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The complainant in this case, J. L. Murphey, is the owner of a large ranch 3.2 miles southeast of Turlock and adjoining the east line of the Southern Pacific Company's right of way on that company's so-called San Joaquin Valley line. Mr. Murphey complains that he is in immediate need of a spur track to be constructed opposite his ranch on the north side of defendant's right of way, but that defendant has refused to construct or permit the construction of such a spur track at the point designated. According to the complainant this spur is

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required to economically ship the produce of his ranch over defendant's railway, and will also be used for the shipment of cattle and other freight, and will be of great benefit not only to him but to many of his neighbors. He states that he has offered to defendant to perform all reasonable requirements and is willing to assume his share of the expense of construction, but that the defendant gives as a reason for its refusal that the nearest siding at Delhi is only a short distance from complainant's farm, and that the putting in of an additional switch between Delhi and Turlock would tend to increase the hazards of train operation. Complainant asserts that it is not practicable for him to haul freight to and from Delhi, for the reasons that the siding is located in soft sand, that there is no station house or freight house at that point, that no stock yards or cattle chutes are provided, and that no agent is located there. It is further stated by complainant that unless this spur is constructed he will suffer great injury and damage.

In its answer to the complaint defendant makes a general denial to many of the complainant's assertions, admits that it declined to construct the desired spur, and avers that the facilities at Delhi are adequate to serve the needs of complainant. The defendant further objects to the construction and maintenance of the proposed spur on the grounds that it would necessarily make railroad operation at that point more dangerous, and states that a spur in the proposed location would serve few, if any, shippers other than the complainant.

The case was heard in Turlock on September 17, 1915.

The crossing over the Southern Pacific Company's track leading to complainant's ranch is 2.5 miles from the Delhi siding and 3.2 miles from the freight and passenger depot at Turlock. The Southern Pacific Company's track between Turlock and Delhi is part of a single track high-speed line over which about twenty passenger and freight trains operate each day. There are no speed limitations on this stretch of track and all trains are protected by electric block signals. Along the west side of and immediately adjoining the right of way between Turlock and Delhi runs the new macadamized state highway. It developed at the hearing that the complainant ships or receives no freight whatever at the siding at Delhi, but hauls all goods and produce to and from Turlock. There can be no question that the complainant is in a fortunate situation as far as first-class wagon road connections with his ranch is concerned; and under ordinary conditions two to three miles' haul from a ranch to the nearest railroad station is by no means considered a hardship, and is not considered prohibitive with regard to cost of team haul.

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The sections of the Public Utilities Act which bear upon this case read as follows:

"Sec. 25. (*a*) Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover; *provided*, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.

(*b*) Under the conditions specified in the proviso in subsection (*a*) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby."

And

"Sec. 39. (*a*) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in section 25 of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 25, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe. Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof, to be determined by the commission after notice to the interested parties and a hearing thereon; *provided*, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense."

It is clear that under the language of section 25 (*a*) and (*b*) as quoted above, the Commission can order the construction of spur tracks or connections with private tracks only if installation and use can

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be had "without materially increasing the hazard of the operation of the railroad," and provided "that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation."

The two questions before the Commission, then, are, (1) will the installation and maintenance of this proposed spur materially increase the hazard of operation? and, (2) will the business which may reasonably be expected by the defendant from the proposed spur justify defendant's share of expense to be incurred in connection with the construction and maintenance of the proposed spur?

The first question was gone into in considerable detail at the hearing, and there is no doubt in my mind that the introduction of a spur into a single track high-speed main line, especially if the spur be connected with the main track at one end only, is poor railroad practice and hazardous to operation. This is particularly true of a line with as much train movement as occurs on this one.

Safety of operation and compliance with Southern Pacific signal standards would necessitate the rearrangement of the electric signal wiring in this block and require the installation of an additional signal to properly protect this spur. Aside from the cost of the spur proper, this is expensive and would cost in the neighborhood of one thousand dollars. While the complainant is willing to pay part of the cost of this spur, he can not be expected to share the signal expense. This expense, however, should not be overlooked by the Commission in considering the probable burdens and benefits to the carrier to be expected from the construction of such a spur. I have come to the conclusion that the construction in this case, without signal protection, would materially increase the hazard of operation.

With reference to the amount of business the defendant would secure by reason of the construction of this spur, it is in evidence that no new business whatever would come to the railroad. The freight from complainant's ranch, which at present moves over Southern Pacific rails would, however, be handled more conveniently and perhaps more economically from the standpoint of the shipper, even if the saving in the cost of wagon haul would not be as great as complainant seems to believe.

The testimony at the hearing as to the amount of freight tonnage originating on complainant's ranch is indefinite. Taking all possible shipments together, and based on the production of wine grapes, sweet potatoes, dried fruit, Egyptian corn, etc., in the last two years, it appears that from 1,000 to 1,200 tons of freight might possibly be shipped annually from this spur, in addition to several carloads of live stock. This averages less than one carload per week. More than

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one-half of this tonnage consists of wine grapes, shipment of which must be made within a short period of a few weeks, and all of which represents only a short haul for the railroad company.

No testimony was offered at the hearing tending to show that there would be freight shipments from this spur by any one except the complainant, and I am of the opinion that but very few, if any, other shippers would make use of this spur.

It would not seem reasonable, considering cost and physical conditions, to order a spur track built under these circumstances.

While, therefore, I am of the opinion that the Commission is not justified, in this case, in ordering defendant to build and maintain this proposed spur on its own right of way at this time, I wish to point out that the defendant is entirely at liberty to enter into a so-called industrial spur track agreement with the complainant under the ordinary and usual terms. If under such an agreement this spur is built into complainant's private property under terms satisfactory to both parties, the permission of this Commission need not be obtained.

I recommend the following form of order:

ORDER.

J. L. Murphey, having filed with this Commission his complaint, and praying that an order be made by this Commission requiring the Southern Pacific Company to construct or permit the construction of a spur track in the location referred to in the foregoing opinion, under such conditions as the Commission might prescribe; and defendant having filed its answer, and a hearing having been held in this case, at which both complainant and defendant were represented; and it appearing to the Commission that the construction and maintenance of this proposed spur track would increase the hazard of operation of defendant's line of railroad at this point; and that the business reasonably to be expected by the defendant by reason of the construction and maintenance of this spur would not justify defendant's share of the expense,

It is hereby ordered that the complaint be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1915.

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DECISION No. 2807.

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF SAN BERNARDINO FOR PERMISSION TO CONSTRUCT A PUBLIC HIGHWAY OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY AT OR NEAR REDLANDS JUNCTION, SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 1785.

Decided October 5, 1915.

County of San Bernardino applies for permission to construct Denman avenue across the tracks of Southern Pacific Company at grade, and it appearing that this street already crosses the tracks approximately 100 feet north of the proposed crossing which must be reached by a detour and the new crossing being considerably safer, application granted.

J. L. Campbell, for Applicant.

George D. Squires, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The crossing covered by this application is located on an east and west road known as Denman avenue. The road has been open across the tracks for many years but the tracks were crossed about 100 feet north of the crossing to be considered here, and it has been necessary to make a detour to and from the tangent to reach the old crossing. Some time ago when it was first proposed to straighten the road by changing the location of the crossing some of the county officials, without authority from the board of supervisors, constructed the crossing now applied for and closed the crossing previously used. Shortly afterward the Southern Pacific Company installed an automatic flagman to protect the new crossing and later gave the county an easement covering its site. This application then, in substance, asks the Commission to approve of what has been done.

The county officials have agreed to stand all expense in connection with the flagman, cattle guards and wing fences. The grading has already been done.

Although this road is not a through road, it seems to be needed by the county. It is unnecessary to say that while the Commission does not approve of the county's procedure in doing the work first and filing the application afterward, there seems to be extenuating circumstances in this case. I believe this application should be granted. The crossing is apparently safer than the one which has been abandoned, and with the crossing protection now installed, it is undoubtedly considerably

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safer than that crossing. It was brought out at the hearing that the approach to the east was not in a condition which would safeguard the passage over the tracks, but since the county officials agreed to fix this in a first-class manner it is not necessary to comment further upon it here.

ORDER.

County of San Bernardino having on July 19, 1915, applied to the Commission for permission to construct a public highway at grade across the track of Southern Pacific Company at or near Redlands Junction, San Bernardino County, California, and a public hearing having been held, and it appearing to the Commission that this application should be granted,

It is hereby ordered that the county of San Bernardino be and the same hereby is granted permission to construct a public highway (known as Denman avenue) over the tracks of Southern Pacific Company at or near Redlands Junction, San Bernardino County, California, as shown by the map attached to the application, subject to the following conditions, viz:

(1) The entire expense of constructing the crossing shall be borne by applicant.

(2) The expense of maintaining the crossing hereafter up to two (2) feet of the rails of Southern Pacific Company shall be borne by applicant. The expense of maintaining the crossing across the tracks and to two (2) feet outside of same shall be borne by Southern Pacific Company.

(3) The crossing shall be constructed of a width of not less than twenty-four (24) feet, with grades of approach not exceeding four (4) per cent, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(4) Applicant shall, at its own expense, install, and Southern Pacific Company shall thereafter maintain, an automatic flagman at this crossing of a type approved by the Commission.

(5) The crossing previously used and located about 100 feet north of the crossing herein considered shall be legally closed and abandoned as a public highway crossing.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of this crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1915.

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DECISION No. 2808.

IN THE MATTER OF THE APPLICATION OF THE COUNTY OF SAN BERNARDINO FOR PERMISSION TO CONSTRUCT CROSSINGS OVER THE TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AT AL REY SIDING, AND NEAR THE STATION KNOWN AS GISH, SAN BERNARDINO COUNTY, CALIFORNIA.

Application No. 1764.

Decided October 5, 1915.

County of San Bernardino, in connection with the construction of a number of new roads which it is building, applies for permission to construct two of such roads across the tracks of The Atchison, Topeka and Santa Fe Railway at grade, and it appearing that when such construction is completed two present crossings will be closed, one of which is exceedingly dangerous, and that the proposed new crossings will both be comparatively safe when protected by automatic flagmen, application granted.

J. L. Campbell, for Applicant.

W. M. Reed, for The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed with the Commission on July 8, 1915, and looks to the construction of two grade crossings over the tracks of The Atchison, Topeka and Santa Fe Railway Company, one in the vicinity of Al Rey across a passing track and the eastbound main line of the railway, and one at Gish over the westbound main line.

San Bernardino County has recently voted a large sum of money for the construction of county roads and the road involved in these two crossings is being built under this appropriation. It replaces an old road now in existence and the construction work has been done upon it for several miles on both sides of these projected crossings. It appears that when the project of building this new road was first considered the matter was taken up with the Santa Fe and estimates were made and the work was undertaken with the understanding that the railway company would bear no portion of the cost of grade separations at these crossings. It appears further that if the county had felt that it would be necessary for grade separations to be made at these points, at its own expense, the increased cost of the work would have been great enough to have caused the county to improve the existing road rather than construct a new one.

On the old road there is a grade crossing, which the testimony shows, is exceedingly dangerous and is so located that it can not be improved by a reasonable expenditure, and it seems to be the unanimous opinion

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of the engineers for the Highway Commission, the Railway company and the Railroad Commission that the two grade crossings now proposed are safer for travel than this one crossing.

Counsel for the Santa Fe, at the hearing, stated that his company did not now oppose grade crossings at these points but would pay one-half of the expense attendant upon grade separations, if grade separations were decided upon. This offer, however, covered only the bridge work, the cost of which was estimated to be about $15,000.00. In addition to this there would be considerable grading to be done and much grading now done would have to be abandoned.

Witnesses for the county testified that no funds were now available to pay the county's share of this construction and that the Santa Fe's offer to pay one-half of the expense of the bridge work had come too late in the proceedings to be of service.

The topography of the country at these crossings lends itself very readily to grade separations. The grade crossings as proposed, however, are not particularly dangerous, and they will be, I believe, when protected by automatic flagmen, comparatively safe for road traffic. While it is unfortunate that the original plans did not contemplate grade separations at these points, in view of the fact that these crossings eliminate a very dangerous crossing now used, and that the county has already gone to great expense to eliminate four other grade crossings on this same road in this vicinity, I am of the opinion that it would be unreasonable to now require a separation of grades at Gish and Al Rey, especially since it will cost very little more in the future, when the county may have the money, to bring about grade separations, than it would at this time.

If the traffic over this road were to be the same as that over the old road these crossings would hardly require protection. The new road, however, forms a link in the roads connecting Los Angeles with the east and the San Joaquin Valley, and when the improvements now under way are completed traffic will undoubtedly be very heavy. Automatic flagmen are not expensive and are an efficient form of protection and I believe in the interests of safety both of these crossings should be so protected.

The crossings eliminated and the crossing to be eliminated by this new road construction should be legally closed as public highways, and the county officials expressed their entire willingness to have this done.

I recommend the following form of order:

ORDER.

County of San Bernardino, having on July 8, 1915, filed with the Commission an application for permission to construct public highway crossings at grade across the tracks of The Atchison, Topeka and Santa

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Fe Railway Company at Al Rey siding, and near the station known as Gish, San Bernardino County, California, as hereinafter indicated, and a public hearing having been held, and it appearing that this application should be granted subject to certain conditions,

It is hereby ordered that the county of San Bernardino be and the same is hereby authorized to construct public highway crossings at grade across the tracks of The Atchison, Topeka and Santa Fe Railway Company at Al Rey siding, and near the station known as Gish, San Bernardino County, California, as shown by the maps and profiles attached to the application; said crossings to be constructed subject to the following conditions and not otherwise, viz:

(1) These crossings shall be constructed of a width not less than twenty (20) feet, with grades of approach not exceeding six (6) per cent, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(2) The entire expense of constructing the crossings shall be borne by applicant.

(3) The expense of maintaining the crossings thereafter on each side of the rails of the track and up to two (2) feet thereof shall be borne by applicant. The expense of maintaining the crossings across the track and to a distance of two (2) feet outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(4) For the protection of these crossings there shall be installed first-class automatic flagmen of a type approved by the Commission. The entire expense of furnishing and installing these automatic flagmen shall be borne by applicant. The expense of maintaining them thereafter in good and first-class condition shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(5) The five crossings shown on the map (filed by applicant at the hearing) as having been abandoned, shall be legally closed as public highway crossings.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of October, 1915.

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Decisions Nos. 2809, 2810, 2811, 2812, 2813, 2814, grade crossings; not printed. See end of volume.

DECISION No. 2815.

IN THE MATTER OF THE APPLICATION OF THE MOUNT TAMALPAIS AND MUIR WOODS RAILWAY FOR AN ORDER AUTHORIZING IT TO ABANDON THE OPERATION OF ITS MUIR WOODS BRANCH FROM OCTOBER 31, 1915, TO MARCH 1, 1916.

Application No. 1874.

Decided October 5, 1915.

REPORT OF THE COMMISSION.

Mount Tamalpais and Muir Woods Railway, a corporation, having on September 14, 1915, filed an application with the Commission asking permission to abandon service on its Muir Woods branch, running from Mesa to a point adjoining Muir Woods, for the months of November and December, 1915, and January and February, 1916, and it appearing that the Commission, after a hearing last year, granted said Mount Tamalpais and Muir Woods Railway permission to abandon service during these months last year; that conditions have not in the mean while changed, and that a formal hearing is not necessary, and that this application should be granted,

It is hereby ordered that Mount Tamalpais and Muir Woods Railway be and the same hereby is authorized to abandon service on its Muir Woods branch extending from Mesa to a point adjoining Muir Woods during the months of November and December, 1915, and January and February, 1916.

The Commission reserves the right to make such further orders relative to this application as to it may appear to be right and proper.

Dated at San Francisco, California, this 5th day of October, 1915.

DECISION No. 2816.

TOWN OF SAUSALITO

vs.

MARIN WATER AND POWER COMPANY.

Case No. 731.

Decided October 6, 1915.

Complainant, an incorporated municipality operating its own water distributing system, purchases water in wholesale quantities from defendant company at a rate established by contract executed March 8, 1909, to run for a period of ten years from August 1, 1909. This rate complainant now contends is unrea-

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sonable and discriminatory and petitions the Commission to establish a just and reasonable rate. Defendant disputes the jurisdiction of the Commission over the rate herein brought into question, contending that in entering into this contract it was acting entirely in a private capacity and not as a public utility, also that the State has authorized the town to contract away the State's power to regulate the rate, and by the town entering into such contract it nullified whatever jurisdiction the State has over such rate during the life of the contract.

Held, With reference to defendant's contention that it has acted in a private capacity in this instance and has never held itself out as a public utility serving complainant: That though it is conceded that water may be appropriated for a private purpose, to contend that the sale of water to complainant is of a private nature is clearly erroneous, for if such were the case, utilities could refuse to serve any one except under contract, thereby entirely removing themselves from public regulation of any nature whatever. That as regards this service and other services of defendant it is a public utility subject to the jurisdiction of this Commission.

Held, Defendant's contention that the State has authorized complainant to contract away the State's power over its water rates: That it is now unanimously held that the provisions of the Federal Constitution forbidding laws impairing the obligations of contract, have no application to the regulation of utilities by states under their police power. All contracts whether entered into prior or subsequent to the exercise by a state of its power to supervise rates, are subject to such control. Numerous cases bearing out this contention cited and reviewed.

Held, That defendant's contention that this contract differs from other contracts of a like nature because one of the parties thereto is a municipality and not a private individual or company, is in error; that there is relatively no difference whatever between a municipal corporation acting in the capacity of a private corporation as a consumer and a private corporation as a consumer.

Held, After careful review of the authorities bearing upon the subject: That the State of California has not granted to the Town of Sausalito the right to contract away the State's power to regulate rates for water sold to such town. Defendant's motion that complaint be dismissed for lack of jurisdiction denied, and it is directed to answer such complaint within twenty days.

Thomas, Beedy & Lanagan, by *James Lanagan*, for Complainant.

Lilienthal, McKinstry & Raymond, by *Joseph Haber, Jr.*, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

In this proceeding, the Town of Sausalito asks the Railroad Commission to establish a just and reasonable rate to be paid by the town for water sold to it by Marin Water and Power Company, hereinafter referred to as the water company. The water thus bought is resold by Town of Sausalito through a municipally owned and operated distributing system to the inhabitants of the town.

The complaint alleges, in effect, that complainant is a municipal corporation of the sixth class; that defendant is a California corporation authorized to supply water to the incorporated towns of Marin County and to the inhabitants thereof for domestic, irrigation and other purposes, and generally to carry on a water business; and that on March 8,

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1909, the town of Sausalito and the water company entered into a certain contract which is set out in full in the complaint, and to which more extended reference will hereinafter be made. The complaint contains allegations with reference to the circumstances surrounding the execution of said contract; alleges that the rates therein specified are unjust and unreasonable, and asks this Commission to establish a reasonable rate to be paid by the town of Sausalito to the water company.

The contract dated March 8, 1909, hereinbefore referred to, provides in part as follows:

(1) The water company agrees to proceed diligently to construct and lay pipes and conduits from its water mains at Corte Madera to the town of Sausalito.

(2) The water company waives any rights which it might have to sell water to any firm, person or corporation within the limits of the town of Sausalito, except to Northwestern Pacific Railroad Company and its successors.

(3) The town of Sausalito agrees to pay to the water company the maximum rate of 30 cents per 1,000 gallons when the total amount of water furnished to the town shall not exceed an average during the year of 200,000 gallons per day, with proportionally lesser amounts if the average daily consumption exceeds 200,000 gallons.

(4) The town agrees that during the first year of the contract it will pay for not less than 150,000 gallons of water per day, and after the first year for not less than 200,000 gallons per day for every year during the life of the agreement.

(5) Provision is made for payment by the town for water delivered to it.

(6) The town agrees that it will not, during the term of the agreement, grant a franchise to any other person or corporation to occupy the streets of Sausalito for the distribution of water. The water company is granted the right to occupy the streets of Sausalito for the purpose of supplying water to points outside of or beyond the town limits.

(7) The term of the agreement is ten years from August 1, 1909, with an option to the town of renewing the agreement for an additional ten years after the expiration of the first term.

The agreement contains other provisions to which it is not necessary here to refer.

The water company filed its written objections to the consideration of the complaint by this Commission and moved to dismiss the complaint on the ground that this Commission does not have jurisdiction to entertain the same.

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A public hearing was held in San Francisco on May 20, 1915, at which time and place evidence and argument on the question of the Commission's jurisdiction were received. A stipulation with reference to certain of the facts was filed and it was agreed that the entire testimony in Application No. 1141, being application of Marin municipal water district for an order of the Railroad Commission fixing and determining the just compensation to be paid to Marin Water and Power Company for its lands, property, and rights should be considered as being in evidence in the present proceeding. Time was granted for the filing of briefs. The briefs have been filed and the matter is now ready for decision.

The water company urges two main objections to this Commission's jurisdiction. In the first place, the water company urges that in the service of water by it to the town of Sausalito, the water company acts entirely in a private capacity, and not as a public utility. The water company further contends that if it should be in error on this point, nevertheless this Commission can not establish the rate at which water is to be sold by the water company to the town, on the ground that the State has authorized the town to contract away the State's power to regulate the rates for water supplied, and that the town, in pursuance of such authorization, has contracted away the State's power for a term of ten years from March 8, 1909.

I shall first consider the point that the water company is not a public utility with reference to its sale of water to the town of Sausalito.

Marin Water and Power Company was incorporated under the laws of this State on March 8, 1906. Among the purposes for which the company was incorporated, as shown by its articles of incorporation, are the following:

> (*a*) To supply water to the county of Marin and other counties in the State of California, and to all the incorporated towns in said counties and State, and to all the inhabitants of said counties or said towns, for domestic, irrigation and all other purposes.
>
> (*b*) To engage in and carry on in all their branches and in all places, a general water, lighting, power, and irrigating business.
>
> (*c*) To so serve the public under the purposes specified in the articles as to entitle the company to the right of eminent domain provided for in title VII of part 3 of the Code of Civil Procedure of the State of California.

In 1908, Marin Water and Power Company purchased the entire property of Marin County Water Company, which latter company was engaged in the sale of water to a number of cities and towns and the inhabitants thereof and in certain unincorporated territory, in southern Marin County. Marin Water and Power Company sells water for compensation to the incorporated towns of San Rafael, Ross, San

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Anselmo, and Larkspur and the inhabitants thereof, the residents of intervening and adjacent unincorporated territory, the State penitentiary at San Quentin, the municipal water plant of Sausalito, the Northwestern Pacific Railroad Company in Sausalito, the United States Military Post at Fort Baker, and the United State Immigration Station at Angel Island.

The water thus sold by the water company is storm water which is collected by the company by means of two dams and reservoirs, located on the northerly slope of Mt. Tamalpais, and known respectively as Lagunitas and Phœnix Gulch. From these reservoirs, transmission mains lead to the respective communities which are served by the company. The town of Sausalito is supplied by means of an 18-inch main, which leads from the water company's mains at Corte Madera in a general southerly direction to the town of Sausalito.

Marin County Water Company, the predecessor of Marin Water and Power Company, claimed and exercised the right of eminent domain, as appears in the decision of the Supreme Court of this State in *Marin County Water Company* vs. *County of Marin*, 145 Cal. 586.

For many years, the rates to be charged for water by Marin Water and Power Company and its predecessor have been established by the various incorporated towns in southern Marin County, which have been supplied with water by these two companies. On April 25, 1912, Marin Water and Power Company filed with this Commission the following documents to show its rates, rules, and regulations:

1. Ordinance No. 409, city of San Rafael, adopted April 15, 1912.
2. Ordinance No. 95, town of San Anselmo, adopted April 10, 1912.
3. Ordinance No. 63, town of Ross, adopted March 14, 1912.
4. Copy of contract with town of Sausalito.
5. Printed form of rules and regulations governing water supply of the Marin Water and Power Company.

The company reported that all charges for water supplied in territory outside of incorporated towns are based on the ordinances passed by the towns of San Anselmo and Ross.

Thereafter, on May 28, 1914, the water company filed the ordinances of San Rafael, San Anselmo, Ross, and Larkspur, for the year 1913-1914, and the ordinance of Ross for the year 1914-1915.

The water company has regularly filed with this Commission its annual reports, required to be filed by all public utilities, which reports cover the company's entire business without segregating the town of Sausalito business.

That Marin Water and Power Company is a public utility subject to the jurisdiction of the Railroad Commission can hardly be denied. The water company, however, urges that with reference to the town

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of Sausalito business, it has acted in a private capacity and not as a public utility. The water company urges that its main from Corte Madera south was constructed for the specific purpose of serving Sausalito, under its contract with the town, and that it has never held itself out as a public utility with reference to the service of the town of Sausalito. It is, of course, conceivable that a water utility may appropriate certain water for public use and at the same time make a separate and distinct appropriation of water for its own private use, or for disposition in some manner other than as a public utility. This theoretical possibility, however, is being stretched to the breaking point by utilities which are trying to escape the jurisdiction of this Commission. Carried to its logical conclusion, this claim may result in the remarkable spectacle of having water companies which have always been understood by everybody to be public utilities claiming that, although the exact amount of water which has hitherto been sold to the public is still impressed with a public use, the company now reserves and sets aside every additional drop of water under its control and refuses to dispose of the same to any one unless a contract is signed. And the moment a contract is signed, the company claims that the very fact that a contract is signed shows that the company exercises the right of selection and that the water referred to in the contract is no longer to be regarded as water devoted to a public service, but rather as private water withdrawn from regulation by public authorities. If this argument is sound as to water companies, there is no reason why gas, electric and telephone companies can not refuse to serve any new customers unless contracts are signed, and then urge that by reason of the fact that the company refused to render service unless a contract was signed, it had withdrawn itself from public regulation with reference to all new customers.

As already indicated, the waters collected by Marin Water and Power Company in its two reservoirs are all storm waters. There is here no room for the doctrine of the appropriation of waters from the banks of a living stream. Although it is theoretically possible, as already indicated, that a public utility water company may appropriate and hold out certain waters for private purposes, there is nothing to show that any particular water collected by Marin Water and Power Company has been held out for the town of Sausalito service. There is no way to segregate this water from the other storm waters which are collected in Lagunitas and Phœnix Gulch reservoirs. The waters which are sold to other communities under an admittedly public service, are gathered in the same reservoirs and flow from those reservoirs into the same pipe lines which are used for the collection and transmission of the waters which eventually are sold to the town of Sausalito. When

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the flow of water starts from Lagunitas and Phœnix Gulch reservoirs, through the water company's transmission mains, there is no way to distinguish the water which will be delivered in Ross, San Anselmo or San Rafael from that which will ultimately be delivered in Sausalito. The main which leads through Ross to Corte Madera conveys water for distribution in Ross as well as water sold to the town of Sausalito. Even the water company's most southerly main, leading from Corte Madera south toward Sausalito, is not devoted exclusively to the transmission of water to be sold to the town of Sausalito. This main carries in part water which is sold by the water company to the Northwestern Pacific Railroad Company in Sausalito, to the United States Government at Fort Baker and to the United States Government for use on Angel Island. The water company has laid its mains on the streets of Sausalito leading to the property of Northwestern Pacific Railroad Company, and has extended the same to the southerly limits of the town, where a connection is made with the main laid by the United States Government from the Fort Baker Reservation, and to the easterly limits of the town and beyond to a wharf, at which point the Federal authorities take water for conveyance to Angel Island. That the service to Northwestern Pacific Railroad Company in the town of Sausalito is a public utility service, as to which this Commission has the power to establish the rates, was practically admitted by the water company at the hearing and would seem to be clear. The water company itself, in July, 1914, filed its petition (Application No. 1223) asking this Commission's authority to increase the rate charged to the Federal government for water used on Angel Island, which petition was granted on July 6, 1914. Application for this authority could only have been made on the theory that this is a public utility service over which this Commission has jurisdiction. Although it is claimed by the water company that the height of Phœnix Gulch Dam was raised 15 feet for the purpose of enabling the water company to supply water to the town of Sausalito, there is nothing to show that the entire increase in the height of this dam was necessary to serve the town of Sausalito or what portion of the water impounded as the result of this increased height of the dam ultimately finds its way to the town of Sausalito. It is absolutely impossible to point to any water which has been segregated from the waters admittedly devoted to a public service and applied as a private venture to the service of the town of Sausalito.

The case of *Marin Water and Power Company* vs. *Town of Sausalito*, 48 Cal. Dec. 399, decided by the Supreme Court of this State on October 6, 1914, does not help the water company in its present contention. In this case, the water company sued the town of Sausalito on its contract to recover payment under the terms of the contract for

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water delivered. As was said by Mr. Justice Shaw in his concurring opinion:

> "The case, as presented, is the very simple and ordinary case of an action to recover a sum due upon a contract as the purchase price of property sold and delivered in pursuance thereof."

The question whether the water company acts as a public utility in the sale of water to the town of Sausalito was not necessary to the decision of the case and was not decided, although the matter was referred to incidentally by Mr. Justice Melvin. The question was expressly reserved, as is shown by the concurring opinion which was written by Mr. Justice Shaw and concurred in by Mr. Justice Sloss. In this connection, Mr. Justice Shaw says:

> "What the effect would be if a rate were fixed by competent authority for the government of said company in its supply to consumers, is a question not here involved. Nor does the question arise whether the town of Sausalito could, by ordinance, fix rates for the Marin Water and Power Company different from those fixed by this contract. It has not fixed such rates."

In the absence of the establishment of rates by competent public authority, it would seem to follow logically and conclusively that the water company has the right, in the absence of a showing of fraud, abuse, excess of authority or inequity, to stand on its contract and to recover thereunder, at least until competent public authority establishes a different rate.

Section 23 of article XII of the Constitution of California, as amended on October 10, 1911, provides in part that—

> "Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any * * * plant or equipment * * * for the production, generation, transmission, delivery or furnishing of * * * water, either directly or indirectly, to or for the public * * * is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature."

The section also provides that—

> "Every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such regulation and control."

The section further provides as follows:

> "The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall

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be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this Constitution."

Section 2 (*w*) of the Public Utilities Act reads as follows:

"The term 'water system,' when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, head-gates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, controlled, operated or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment or measurement of water for power, irrigation, reclamation or manufacturing, or for municipal, domestic or other beneficial use."

Section 2 (*x*) of the Public Utilities Act reads as follows:

"The term 'water corporation,' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system for compensation within this State."

Section 2 (*bb*) of the Public Utilities Act reads as follows:

"The term 'public utility,' when used in this act, includes every common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger and warehouseman, where the service is performed for or the commodity delivered to the public or any portion thereof. The term 'public or any portion thereof' as herein used means the public generally, or any limited portion of the public including a person, private corporation, municipality or other political subdivision of the State, for which the service is performed or to which the commodity is delivered, and whenever any common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger or warehouseman performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger or warehouseman is hereby declared to be a public utility subject to the jurisdiction, control and regulation of the commission and the provisions of this act. Furthermore, when any person or corporation performs any service or delivers any commodity to any person or persons, private corporation or corporations, municipality or other political subdivision of the State, which in turn either directly or indirectly, mediately or immediately, perform such service or deliver such commodity to or for the public or some portion thereof, such person or persons, private corporation or corporations and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction,

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control and regulation of the commission and to the provisions of this act."

Section 1 of chapter 80 of the Laws of 1913, approved April 25, 1913, reads as follows:

> "Whenever any person, firm or private corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any water system within this State, sells, leases, rents or delivers water to any person, firm, private corporation, municipality or any other political subdivision of the State whatsoever, except as limited by section 2 hereof, whether under contract or otherwise, such person, firm or private corporation is a public utility, and subject to the provisions of the public utilities act of this State and the jurisdiction, control and regulation of the railroad commission of the State of California."

Unless these constitutional and statutory provisions should for any reason be held to violate some provision of the Federal Constitution, it would seem that there can be no doubt whatsoever that the water company is a public utility with respect to its service to the town of Sausalito, as well as its service to other customers. That the people of California had the right to enact section 23 of article XII of the Constitution, and that the legislature of this State had the right to declare such companies as the water company to be public utilities with reference to their entire business is, in my opinion, clearly established by a long line of decisions of the Supreme Court of the United States, beginning with *Munn* vs. *Illinois*, 94 U. S. 113, and ending for the present with *German Alliance Insurance Company* vs. *Lewis*, 233 U. S. 389, decided on April 20, 1914. These authorities are analyzed in this Commission's Decision No. 1688, in Case No. 551, *Becker* vs. *Holabird* (Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 153).

I find as a fact that Marin Water and Power Company is a public utility with reference to its sale of water to the town of Sausalito, as well as with reference to its sale of water to its other customers. It follows that this Commission has jurisdiction to establish the rate to be charged by the water company for water sold to the town of Sausalito, unless the State has in some way foreclosed itself from exercising such jurisdiction.

This brings me to a consideration of the second point urged by the water company.

In its brief herein, the water company assumes, for the sake of the argument, that it is a public utility with reference to its sale of water to the town of Sausalito, but contends that even if this is the case, the company is not subject to this Commission's jurisdiction. This contention is based on the claim that the town of Sausalito has been

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granted authority by the State to contract away the State's power over the rate at which water is sold to the town of Sausalito and that the town has, by contract, actually bartered away the State's power in this respect. In view of the constitutional provisions of this State, conferring authority upon the Railroad Commission, this question is really a Federal question. In passing upon the water company's contention in this regard I shall accordingly confine myself largely to the decisions of the Supreme Court of the United States.

Since the decision of the Supreme Court of the United States in the case of *Munn* vs. *Illinois*, 94 U. S. 113, it is generally agreed that the power of the State to supervise and regulate public utilities is based on the police power. Whenever the State supervises and regulates a public utility, in establishing rates, removing discriminations, regulating service, extensions and facilities, supervising the issue of securities, or in other respects affecting the relationship between the utilities and their customers, such action is taken under the State's police power. See also Dillon on Municipal Corporations, 5th edition, section 1324, and the authorities there cited. Formerly, there was some doubt as to whether a state, even under the police power, might change a rate which had been established by a utility by contract. Now, however, it is unanimously held that the provisions of the Federal Constitution forbidding laws impairing the obligation of contracts and declaring that property shall not be taken without due process of law, have no application to the regulation and supervision of public utilities by the State, under its police power. No public utility can, by the simple device of entering into contracts with its customers, withdraw itself from the State's control. All such contracts, whether made before or after the State actually undertakes the supervision and control of public utilities, must be taken to have been made subject to the State's right to exercise its power of supervision and control whenever it sees fit to do so.

The general principle is clearly set forth in *Odd Fellows' Cemetery Association et al.* vs. *City and County of San Francisco*, 140 Cal. 225; *Chicago, Burlington and Quincy Railroad Co.* vs. *Nebraska*, 170 U. S. 57; and *Manigault* vs. *Springs*, 199 U. S. 473.

In the *Odd Fellows' Cemetery Association* case, the Supreme Court of this State says:

> "It is the settled law that all property is held subject to the exercise of the police power, and that the provisions of the constitution forbidding laws impairing the obligation of contracts, and declaring that property shall not be taken without due process of law, have no application in such cases."

In the *Chicago, Burlington and Quincy Railroad Company* case, it was held that a contract between the city of Omaha and two railroad

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companies providing for the building of a viaduct in Omaha at the expense of the railroad companies, though valid when made, was subject to the supervisory power of the legislature of Nebraska, which thereafter enacted a statute changing the terms of the contract with reference to the duty of keeping the viaduct in repair. Mr. Justice Shiras, in ruling against the claim of the railroads that this statute impaired the obligation of their contract, says, at page 72:

> "Usually where a contract, not contrary to public policy, has been entered into between parties competent to contract, it is not within the power of either party to withdraw from its terms without the consent of the other; and the obligation of such contract is constitutionally protected from hostile legislation."

Referring then to the distinction between a contract between private individuals and a contract between public or quasi-public individuals or corporations, Mr. Justice Shiras continues:

> "When, however, the respective parties are not private persons, dealing with matters and things in which the public has no concern, but are persons or corporations whose rights and powers were created for public purposes, by legislative acts, and where the subject matter of the contract is one which affects the safety and welfare of the public, other principles apply. Contracts of the latter description are held to be within the supervising power and control of the legislature when exercised to protect the public safety, health and morals, and that clause of the federal constitution which protects contracts from legislative action can not in every case be successfully invoked. The presumption is that when such contracts are entered into, it is with the knowledge that parties can not, by making agreements on subjects involving the right of the public, withdraw such subjects from the police power of the legislature."

In the *Manigault* case, plaintiff contended that a certain contract by which the defendant had agreed with him to remove a certain dam over a navigable river had been impaired by a subsequent act of the state legislature authorizing the defendant to erect and maintain a dam across this river. In deciding that the principle of the impairment of the obligation of the contract does not apply to the exercise by a state of its police power, the Supreme Court of the United States, at page 480, says:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health,

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> morals, comfort and general welfare of the people, and is paramount to any rights under contract between individuals."

See, also, the analogous cases of *Louisville and Nashville Railroad Company* vs. *Mottley,* 219 U. S. 467, and *Armour Packing Company* vs. *United States,* 209 U. S. 56.

In a number of recent cases, the United States Supreme Court has held that the contract clause in the Federal Constitution does not prevent a state from altering or modifying a rate established by a public utility by contract.

In *Knoxville Water Company* vs. *Knoxville,* 189 U. S. 434, the water company made the claim, among others, that an ordinance of the city of Knoxville establishing maximum rates for water impaired the company's contracts with its consumers. In ruling against this claim, Mr. Justice Holmes, at page 438, says:

> "But such contracts, of course, were made by it (the water company) subject to whatever power the city possessed to modify rates."

The city's power in this behalf was that portion of the city's police power in the premises which had been delegated by the State to the city.

In *Portland Railway, Light and Power Company* vs. *Railroad Commission of Oregon,* 229 U. S. 397, decided on June 10, 1913, it appears that the Railroad Commission of Oregon found that discrimination existed in the fares charged by Portland Railway, Light and Power Company between Portland and Milwaukee as contrasted with the fare charged between Portland and Lents. The Commission reduced the fare between Portland and Milwaukee from ten to five cents, so as to remove the discrimination. Referring to the claim of the railroad that the discrimination was justified by reason of a contract which the railroad had entered into providing for a five cent fare between Portland and Lents, Mr. Justice Day, at page 412, says:

> "The contract set up by which the fares from Lents were required to be not greater than five cents can not be held to justify the discrimination, as such contracts must be taken to have been made in view of the continuing power of the State to control the transportation of common carriers subject to its jurisdiction."

The same principle was applied by the Supreme Court of this State in *Pinney & Boyle Company* vs. *Los Angeles Gas and Electric Corporation,* 168 Cal. 12, decided on June 10, 1914. In this case, after Los Angeles Gas and Electric Corporation had contracted to supply Pinney & Boyle Company with electric energy at a certain rate, the city of Los Angeles established the rates which the Electric Corporation

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was authorized to charge, which rates were higher than those established in the contract with Pinney & Boyle Company. Pinney & Boyle Company refused to pay the higher rate and defendant declined to furnish electricity except at the rate prescribed by the ordinance of city of Los Angeles. In holding that the contract rate must yield to the rate established by public authority, Mr. Justice Henshaw, at page 18, says:

> "A word perhaps should be added touching the asserted violation of the provision of the contract between the company and plaintiff by the enforcement of the terms of the regulatory ordinance. Upon this it is sufficient to say that it will be conclusively presumed that the parties contracted in contemplation of the power of the proper board or tribunal to fix the rates in every case where such power exists and may have been thereafter legally exercised (citing cases)."

The water company in its brief recognizes this general rule as follows:

> "We recognize the general rule that where a public utility contracts for service at a fixed rate for a definite term, ordinarily the rate may be modified during the term provided by the contract without impairing the obligation thereof, and this on the theory that such regulation is an exercise of the State's police power inherent in its sovereignty and that the parties must be deemed to have contracted with reference to such possibility of regulation by the State in the exercise of such power."

In view of this admission, I shall not pursue the subject further, but shall content myself by referring to this Commission's Decision No. 536, in Application No. 118, being application of *Murray and Fletcher* for an order authorizing an increase in water rates (Vol. 2, Opinions and Orders of the Railroad Commission of California, p. 464), and Decision No. 1309, in Case No. 483, *Town of Ukiah* vs. *Snow Mountain Water and Power Company* (Vol. 4, Opinions and Orders of the Railroad Commission of California, p. 293), in which cases the authorities bearing on this question are collected.

The water company, however, contends that its contract is taken out of the general rule by reason of the fact that the contract is made with a municipality instead of with a private corporation or person. In this connection, the water company first urges that the town of Sausalito is exercising a private function and is a private water seller: *Davoust* vs. *City of Alameda,* 149 Cal. 72; *South Pasadena* vs. *Pasadena Land and Water Company,* 152 Cal. 579. If this is true, it is difficult to understand why the contract of the public utility with this private consumer should stand on any different footing from its contract with any other private consumer. As already indicated, the rate specified in every contract between a public utility and a private corporation or

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person as consumer, is subject to alteration at the hands of the State under its police power. I can see no distinction in this respect between a private corporation which is a consumer and a municipal corporation which acts in the capacity of a private corporation as a consumer. Hence, if the town of Sausalito be regarded as exercising a private function and as being a private consumer, its case falls within the general rule and the State has the right to regulate the rate at which the service is rendered by the public utility.

The water company also relies on a number of authorities dealing with the right of the State to regulate a public utility rate in cases in which the State has delegated or is claimed to have delegated to a municipality, acting in its governmental capacity, the right to contract away the State's power of regulation over a utility's rates. In these cases, the municipality acts not in a private capacity but as agent of the State in a governmental capacity. It certainly can not be contended that the municipality, acting as a private corporation, can be authorized to barter away a power of government.

The principle on which the water company relies, namely, that the State may authorize a municipality to contract away a part of the State's police power in the supervision and regulation of public utilities, is established by a number of decisions of the Supreme Court of the United States: *Los Angeles* vs. *Los Angeles City Water Company*, 177 U. S. 558; *Detroit* vs. *Detroit Citizens' Street Railway Company*, 184 U. S. 368; *City of Cleveland* vs. *Cleveland City Railway Company*, 194 U. S. 517; *Vicksburg* vs. *Vicksburg Waterworks Company*, 206 U. S. 496; *City of Minneapolis* vs. *Minneapolis Street Railway Company*, 215 U. S. 417. In each of these cases, the Supreme Court of the United States held that an ordinance establishing the rates to be charged by a public utility amounted to a contract, that such contract had been authorized by the State itself and that the municipality could not thereafter reduce the rate established in the original ordinance. In two of these cases, the *Los Angeles* case and the *Minneapolis* case, the legislature had expressly ratified the original ordinance. In the other three cases, the court found that the State had expressly authorized the municipality to contract away the State's power with reference to the regulation of the utility rate. In none of these cases was there any constitutional provision prohibiting the action taken by the legislature, either directly or through the instrumentality of a municipality, and in each of these cases, the later action attempting to reduce the rate, was taken by the municipality itself and not by the legislature or a State commission.

In a number of other cases, including the more recent cases, the Supreme Court of the United States has held that on the facts of those cases, the local authorities had not been granted the power to barter

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away the State's right to regulate a utility's rate. In these cases, later ordinances reducing the rates have been upheld by the Supreme Court.

In *Freeport Water Company* vs. *Freeport City*, 180 U. S. 587, the water company brought an action against the city to recover compensation for water delivered. The city replied that it had reduced the rates established in the original ordinance and offered to pay the lower rates. The water company replied that the later ordinance impaired the company's contract rights growing out of the original ordinance, and hence, was void under the Federal Constitution. The water company relied on a statute, enacted prior to the original ordinance, authorizing cities and villages to "contract" with water companies "for a supply of water for public use, for a period not exceeding thirty years." This language is practically identical with the portion of the Municipal Incorporation Act of this State, on which the water company herein relies and to which reference will hereinafter be made.

The Supreme Court of Illinois, in holding that this language was not sufficient to authorize a municipality to contract away the State's power to regulate the rates established by ordinance, says:

> "The language of the statute does not necessarily imply the power to make a fixed rate. The authority 'to contract for a supply of water for public use for a period not exceeding thirty years' does not necessarily imply that the price of the supply should be fixed for the entire period. The supply could be made for the entire term, but the price is to be determined from time to time, and the rates to be settled by the rules of the common law."

The Supreme Court of the United States, by a divided court, sustained the decision of the Supreme Court of Illinois, thus holding that the power of a municipality to "contract" for a supply of water for public use for a definite term does not give the municipality the right to contract away the power of the State, or the municipality's own power as the agent of the State in its governmental capacity, to regulate the rate.

In *Rogers Park Water Company* vs. *Fergus*, 180 U. S. 624, a similar conclusion was reached by the Supreme Court of Illinois and sustained by the Supreme Court of the United States, again by a divided court.

The leading case on this question is *Home Telephone and Telegraph Company* vs. *City of Los Angeles*, 211 U. S. 265, decided on November 30, 1908. This was a complaint by the telephone company for an injunction against the city of Los Angeles to prevent the city from enforcing certain ordinances establishing maximum rates for telephone service. The ordinance originally granting the franchise to the telephone company had prescribed a certain maximum rate which was higher than the rate which the city council thereafter undertook to establish by the ordinance which the telephone company tried to enjoin.

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The telephone company claimed that the later ordinance, establishing lower maximum rates, violated its contract with the city as expressed in the ordinance originally granting the company's franchise. The Supreme Court of the United States held that the State of California had not delegated to the city of Los Angeles the power to contract away the city's right, as agent of the State, to supervise and regulate the rates of the telephone company, and that consequently, as no binding contract establishing rates had been entered into, the case presented was not one of the impairment of contract obligations. At page 273, Mr. Justice Moody says:

> "The surrender, by contract, of a power of government, though in certain well defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized. No other body than the supreme legislature (in this case the legislature of the state) has the authority to make such a surrender, unless the authority is clearly delegated to it by the supreme legislature. The general powers of a municipality or of any other political subdivision of the State are not sufficient. Specific authority for that purpose is required."

Again, at page 273, he continues:

> "It has been settled by this court that the State may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public service corporation (or natural person) for a definite term, not grossly unreasonable in point of time, and that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates: *Detroit* vs. *Detroit Citizens' Street Railway Company*, 184 U. S. 368, 382; *Vicksburg* vs. *Vicksburg Water Works Company*, 206 U. S. 496, 508. But for the very reason that such a contract has the effect of extinguishing *pro tanto* an undoubted power of government, both its existence and the authority to make it must clearly and unmistakably appear, and all doubts must be resolved in favor of the continuance of the power." (Citing cases.)

Referring then to the clause in the charter of the city of Los Angeles authorizing the city to establish telephone rates, the court, at page 274, says:

> "This is an ample authority to exercise the governmental power of regulating charges, but it is no authority to enter into a contract to abandon the governmental power itself. It speaks in words appropriate to exercise the governmental power of regulating charges, but it is no authority to enter into a contract to abandon the governmental power itself."

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After analyzing most of the cases upon which the defendant in this proceeding relies, the court, at page 277, concludes:

> "All these cases agree that the legislative authority to the municipality to make the contract must clearly and unmistakably appear. It does not so appear in the case at bar. The appellant has failed to show that the city had legislative authority to make a contract of exemption from the exercise of the power of regulation conferred in the charter. It therefore becomes unnecessary to consider whether such a contract in fact was made. The appellant's contention, that there was a violation of the obligation of its contract, must therefore be denied."

In *Wyandotte County Gas Company* vs. *State of Kansas*, 231 U. S. 622, decided on January 5, 1914, the State of Kansas filed a complaint for an injunction against Wyandotte County Gas Company to enjoin the company from charging its domestic consumers in certain cities in Kansas, a rate for natural gas in excess of 25 cents per 1,000 cubic feet. The gas company insisted that its contract rights had been impaired. The company relied on an ordinance passed by Kansas City in 1904, prescribing a rate for natural gas higher than the 25 cent rate later established by an act of the legislature. The gas company relied on a statute of 1903, which gave to cities of the first class, including Kansas City, the power to make all contracts necessary to the exercise of the city's corporate or administrative powers, to fix maximum rates for certain public utility services, including gas, and to secure a supply of natural gas and to contract for laying pipes for such service. Although the ordinance granting a franchise to Wyandotte Gas Company undoubtedly became, upon acceptance, in certain aspects a legal contract, the Supreme Court of the United States held that Kansas City had not been authorized to contract away the governmental power of regulating utility rates and that the legislature had the right thereafter to decrease the rates originally established by ordinance.

In the very recent case of *Milwaukee Electric Railway and Light Company* vs. *Railroad Commission of Wisconsin*, 238 U. S. 174, decided on June 14, 1915, the electric railway company operating in Milwaukee filed a complaint against the Railroad Commission of Wisconsin to enjoin the enforcement of an order directing the company to sell street car tickets in packages of 13 for 50 cents. The electric railway company claimed that this order amounted to an impairment of a contract in that the original franchise ordinance provided for the sale of tickets in packages of 25 for $1.00, or 6 for 25 cents, this rate being higher than that established by the Railroad Commission. The judgment of the Supreme Court of Wisconsin, sustaining the Railroad Commission's

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order, was affirmed by the Supreme Court of the United States by a unanimous decision.

Referring to the general principle that the renunciation of the sovereign right of establishing public utility rates must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction, Mr. Justice Day says:

> "The fixing of rates which may be charged by public service corporations, of the character here involved, is a legislative function of the state, and while the right to make contracts which shall prevent the state during a given period from exercising this important power has been recognized and approved by judicial decisions, it has been uniformly held in this court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction. This proposition has been so frequently declared by decisions of this court as to render unnecessary any reference to the many cases in which the doctrine has been affirmed."

Mr. Justice Day holds that it is necessary, in order to establish a case of impairment of contract obligations, under circumstances such as those shown by the record, to show that a contract has been entered into clearly excluding any further right of the State to act upon the subject in the exercise of its legislative authority. After reviewing the decision of the Supreme Court of Wisconsin, Mr. Justice Day concludes as follows:

> "In view of the weight which this court gives in deciding questions involving the construction of legislative acts to decisions of the highest courts of the states in cases of alleged contracts, and our own inability to say that this statute unequivocally grants to the municipal authorities the power to deprive the legislature of the right to exercise in the future an acknowledged function of great public importance, we reach the conclusion that the judgment of the Supreme Court of Wisconsin in this case should be affirmed."

Turning now to the particular constitutional and statutory provisions under which this question must be decided in California, I desire to direct attention, first, to section 1 of article XIV of the Constitution of this State, as adopted in 1879, reading as follows:

> "Section 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; *provided*, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city or town, or the inhabitants

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thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation, to the city and county, or city or town where the same are collected, for the public use."

This section specifically provides that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied "to any city and county, or city or town, or the inhabitants thereof" shall be fixed annually by the appropriate legislative body. The section provides further than any such body failing annually to pass the necessary ordinances or resolutions fixing water rates shall be subject to peremptory process to compel action, and shall be liable to such further process and penalties as the legislature may prescribe. It thus appears clearly that the Constitution itself, prior to the transfer of supervisory powers over public utilities to this Commission, required that the local authorities should establish, each year, the rates to be charged by public utility water companies "to any city or town, or the inhabitants thereof." The supply of water by Marin Water and Power Company to the town of Sausalito falls squarely within the language of this constitutional provision. That the framers of the Constitution had in mind the possibility of the sale of water by a municipality through the instrumentality of a publicly owned and operated distributing system appears from section 19 of article XII of the Constitution, as originally adopted in 1879.

In *Spring Valley Water Works* vs. *Board of Supervisors of San Francisco*, 61 Cal. 18, the Supreme Court, in referring to section 1 of article XIV of the Constitution of this State, says:

"The provisions contained in the above article, to the effect that 'the rates of compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed,' etc., is as broad and comprehensive as the English language could make it, and gives to the board of suprvisors of

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> the city plenary power over the subject matter to which the article relates. Water supplied to the city and county is as fully covered by the express language of the article as is water supplied to the individual consumers, and the whole matter of rates or compensation is placed within the power and control of the board of supervisors."

While the rates established by the board of supervisors in the *Spring Valley* case were for water supplied to the municipality, to be used for its municipal purposes, it is no more illogical to say that the board of supervisors shall have the power to prescribe the rates to be collected for the public utility for water sold to the municipality for one purpose than for another purpose. If the municipality has the right to prescribe the rates which it shall pay for water which it uses for flushing its sewers, or for fire service, there would seem to be no logical reason why it should not also prescribe the rates to be paid for the water which it thereafter sells to its inhabitants. In either event, the party buying the water fixes the rate at which he may buy it. The language of the Constitution is broad enough to cover the establishment by the municipality of the price at which water is to be sold to it for resale to its inhabitants. Any act of the legislature undertaking to authorize a municipality to contract away its right to establish public utility water rates would seem to be in absolute defiance of the mandate of the State as expressed in section 1 of article XIV of the Constitution, which requires the local authorities, each year, under penalties to be prescribed by the legislature, to establish the rates for which water may be sold to the municipality and to the inhabitants thereof.

In accordance with the provisions of section 1 of article XIV, the legislature, by act of March 7, 1881, authorized and empowered the various local legislative bodies, and made it their official duty, to fix, annually, the rates "that shall be charged and collected by any person, company, association or corporation, for water furnished to any such city and county, or city or town, or the inhabitants thereof." The act provides that any board of supervisors, or other legislative body, of any city and county, city or town, which shall fail or refuse to perform any of the duties prescribed by the act, shall be deemed guilty of malfeasance in office, and upon conviction thereof, at the suit of any interested party, in any court of competent jurisdiction, shall be removed from office. It would seem that this statute, like section 1 of article XIV of the Constitution, is entirely inconsistent with any grant of power by the legislature to any municipality of the right to contract away its power and duty, as agent of the State, to establish water rates annually.

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Section 548 of the Civil Code of this State, reads as follows:

> "No corporation formed to supply any city, city and county, or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city, city and county, or town and the corporation. Contracts so made are valid and binding in law, but do not take from the city, city and county, or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years."

The legislature thus provided that contracts for the supply of water, while they are valid and binding, "do not take from the city, city and county, or town the right to regulate the rates for water." Thus, the legislature declared, in most unmistakable terms, that contracts entered into by municipalities for the supply of water should not deprive the local authorities of the right to regulate the rates.

The water company relies solely on subdivision 3 of section 862 of the Municipal Incorporation Act, referring to the powers of municipal corporations of the sixth class, and reading as follows:

> "The board of trustees of said city shall have power:
> 3. To contract for supplying the city or town with water for municipal purposes or to acquire, construct, repair, and manage pumps, aqueducts, reservoirs, or other works necessary or proper for supplying water for the use of such city or the inhabitants, or for irrigating purposes therein."

The water company urges that by granting to cities of the sixth class the power "to contract for supplying the city or town with water for municipal purposes," the legislature intended to grant, and did grant to cities of the sixth class, the power to contract away the right of the State, and their own right as agents of the State in their governmental capacity, to establish, from time to time, the rates to be charged for water sold to such municipalities by water companies. In the light of the decisions of the Supreme Court of the United States, to which I have referred, and of the specific constitutional and statutory provisions of this State, I am of the opinion that there is no merit in this contention. The construction suggested by the water company would do direct violence to the mandate of the Constitution itself and would be at entire variance both with the law of 1881 and with section 548 of the Civil Code. The contention of the water company is entirely inconsistent with the duty of the local authorities to establish the water rates each year, as prescribed both by the Constitution and by the statute of

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1881, and is also absolutely inconsistent with the provisions of section 548 of the Civil Code specifically providing that in case of contracts for the supply of water, the local authorities shall retain the right to regulate the rates.

After a careful review of the authorities and of the applicable constitutional and statutory provisions, I am of the opinion that the State of California has not granted to the town of Sausalito the right to contract away the State's power to regulate the rate at which water may be sold to the town. The people of California, by recent amendment to section 23 of article XII of the Constitution of this State, have conferred upon the Railroad Commission the power, in so far as the Railroad Commission had not already acquired the same, to establish all the rates to be charged by public utilities in California. The conclusion seems irresistible that the Railroad Commission has the power to establish the rate at which Marin Water and Power Company sells water to the town of Sausalito.

I find that there is no merit in the water company's contentions with reference to this Commission's jurisdiction and recommend that an order be entered directing the water company to file its answer, so that this case may be heard and disposed of on the merits.

I submit the following form of order:

ORDER.

Defendant's motion to dismiss the complaint in the above entitled proceeding by reason of lack of jurisdiction, having come on duly for hearing, and argument having been had thereon, and said motion having been submitted,

It is hereby ordered that said motion be and the same is hereby denied, and that the defendant be and it is hereby directed to satisfy the complaint or to answer within twenty (20) days.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of October, 1915.

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DECISION No. 2817.

LOS MOLINOS CITRUS FARMS COMPANY, LYON CATTLE COMPANY, AND THE SUNSET SYNDICATE

vs.

CONELAND WATER COMPANY.

Case No. 612.

IN THE MATTER OF THE RATES OF CHARGES OF CONELAND WATER COMPANY, ON THE RAILROAD COMMISSION'S OWN MOTION.

Case No. 671.

Decided October 6, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

We have given careful consideration to the petition for rehearing herein and find no reason for changing the opinion and order heretofore rendered in the above entitled proceedings.

The petition for rehearing should be denied.

ORDER.

Coneland Water Company having filed a petition for rehearing in the above entitled proceedings, and careful consideration having been given thereto, and no good reason appearing why said petition should be granted,

It is hereby ordered that said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 6th day of October, 1915.

DECISION No. 2818.

W. E. BARNARD AND HARRY BUTLER

vs.

SUTTER BUTTE CANAL COMPANY.

Case No. 583.

Decided October 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainants having made written request, on October 2, 1915, that the above entitled proceeding be dismissed,

It is hereby ordered that the same be and it is hereby dismissed, without prejudice.

Dated at San Francisco, California, this 6th day of October, 1915.

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DECISION No. 2819.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE BY IT OF BONDS, THE EXECUTION AND DELIVERY OF A MORTGAGE TO SECURE THE SAME, THE ISSUE OF STOCK AND THE ISSUE OF NOTES PAYABLE AT PERIODS OF MORE THAN TWELVE MONTHS AFTER THE DATE THEREOF.

Application No. 1644.

Decided October 8, 1915.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

SECOND SUPPLEMENTAL OPINION.

This Commission has heretofore issued its order and first supplemental order in the above entitled matter. In its first supplemental order (Decision No. 2735) dated September 1, 1915, this Commission authorized Midway Gas Company to execute a mortgage of its property on certain specified conditions, said authority being expressed as follows:

"It is further ordered that Midway Gas Company be granted authority, and it is hereby granted authority, to execute a mortgage of its property substantially in the form of a copy of a mortgage and deed of trust filed with this Commission in this proceeding as Exhibit 'E,' entitled 'First and Refunding Mortgage, Midway Gas Company to Mercantile Trust Company of San Francisco', providing for an issue of bonds dated December 1, 1914, and maturing December 1, 1929; on the condition that said form of mortgage and deed of trust be amended so that the amount applicable to sinking fund shall be determined in so far as a proper working capital is concerned, as indicated in the foregoing opinion, by eliminating the condition that the amount of such working capital shall be determined in the discretion of the board of directors of Midway Gas Company."

Midway Gas Company has now amended its mortgage and deed of trust in accordance with the requirements of this Commission's order; has duly executed its mortgage and has filed a copy of the same with this Commission in this proceeding as Exhibit "E Amended." As the mortgage as amended meets the conditions set forth in the Commission's order, it is proper that this Commission issue a final order finding that these conditions have been complied with.

I therefore submit the following form of order:

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SECOND SUPPLEMENTAL ORDER.

It is hereby found by the Railroad Commission of the State of California that the first and refunding mortgage executed by Midway Gas Company, a copy of which has been filed in these proceedings and marked "Exhibit E, Amended," is in compliance with the authority heretofore granted to Midway Gas Company on September 1, 1915 (Decision No. 2135), to execute a mortgage of its property on conditions therein specified.

The foregoing second supplemental opinion and order are hereby approved and ordered filed as the second supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of October, 1915.

DECISION NO. 2820.

IN THE MATTER OF THE APPLICATION OF THE ANNEX CITY WATER COMPANY AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1896.

Decided October 9, 1915.

Annex City Water Company applies for and is granted permission to transfer its water system to the city of Los Angeles for the sum of $15,875.00.

REPORT OF THE COMMISSION.

Annex City Water Company, which company is engaged in supplying water to about 9,000 persons in the city of Los Angeles in territory bounded on the north by Slauson avenue, on the west by Hoover street, on the south by 80th street and Florence avenue and on the east by Figueroa street and South Park avenue, and also supplying Ascot Park by a pipe line running east from South Park avenue opposite 60th street, having applied to this Commission for authority to transfer to the city of Los Angeles for the sum of $15,875.00 its water system, the property to be transferred being described in the form of deed attached to the application and marked Exhibit "B," as follows:

> "(a) All water pipes, service connections, meters, appliances, appurtenances and extensions, constituting and pertaining to the water distributing systems known as the water works of the Hawthorne Water Company system and of the Annex City Water

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Company system, and supplying water in the territory within the city of Los Angeles, and bounded as follows: on the north by Slauson avenue, on the west by Hoover street, on the south by 80th street and Florence avenue, and on the east by Figueroa street and South Park avenue, and also a pipe line running east from South Park avenue opposite 60th street to supply Ascot Park, together with all mains, connections and appurtenances pertaining to said water systems, or either thereof, in any of said bounding streets or elsewhere in said territory, and all water mains and service connections, extensions and appurtenances thereof, as used and operated by said first party in supplying water in said territory; excepting wells, pumps, machinery, tools, supplies on hand, buildings and tank and the land whereon the same are located;

(*b*) All franchises and rights of way owned or held by or for said first party, and used or necessary in connection with the construction or operation of said water works, or any part thereof, or any extension of said works;

(*c*) All maps and records pertaining to said water systems, or either thereof, and relating to pipes, service, consumers, property ratings, etc."

And the Board of Public Service Commissioners of the city of Los Angeles having joined in this application and it appearing to the Commission that this is a case in which a public hearing is not necessary and that the application should be granted,

It is hereby ordered that this application be and the same is hereby granted.

Dated at San Francisco, California, this 9th day of October, 1915.

DECISION NO. 2821.

C. F. HAGER ET AL.

vs.

SAN JOAQUIN LIGHT AND POWER CORPORATION.

Case No. 856.

Decided October 9, 1915.

C. F. Hager, for Complainants.

Short & Sutherland, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

In this proceeding complainants asked this Commission to make its order requiring defendant to build an extension for the purpose of giving service to the inhabitants of the town of Riverdale.

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Complaint and answer were filed, and the hearing was set for October 1, 1915, at Fresno. At the hearing, complainants presented a letter from defendant's assistant general manager, E. B. Walthall, advising that the company will make the necessary installation, so as to render service to the inhabitants of Riverdale, the service to begin within ninety days from September 30, 1915. Complainants accordingly ask that the complaint be dismissed, without prejudice.

I submit the following form of order:

ORDER.

The above entitled proceeding having come on regularly for hearing on October 4, 1915, and complainants having filed a written stipulation requesting that this proceeding be dismissed, without prejudice,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed, without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of October, 1915.

DECISION NO. 2822.

W. J. ROGERS AND CENTRAL PACIFIC LAND AND LUMBER COMPANY

vs.

SACRAMENTO VALLEY WEST SIDE CANAL COMPANY, AND WILLIAM F. FOWLER, RECEIVER OF THE PROPERTY OF SACRAMENTO VALLEY WEST SIDE CANAL COMPANY.

Case No. 597.

SACRAMENTO VALLEY REALTY COMPANY ET AL.

vs.

SACRAMENTO VALLEY WEST SIDE CANAL COMPANY, AND WILLIAM F. FOWLER, RECEIVER OF THE PROPERTY OF SACRAMENTO VALLEY WEST SIDE CANAL COMPANY.

Case No. 673.

Decided October 9, 1915.

Defendant water company, and W. F. Fowler, its receiver, apply for a rehearing in above entitled cases, contending that the rates established in the original decision of the Commission are unjust in that they do not provide sufficient revenues to cover operating expense, depreciation and a return on the value of its property.

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Held, That though a utility is reasonably entitled to revenues as contended for by defendant, the Commission must also consider what rates consumers may reasonably be expected to pay for the service rendered. As in the present case, a system is built capable of supplying a vast area, though only actually serving a small number of consumers, and that such limited number of consumers can not be expected to pay rates which would provide a return on this system which was built considerably larger than their limited needs require.

Held, That defendant heretofore had not only voluntarily established rates the same as those established by the Commission, which it now contends are unjust, but actually had numerous contracts outstanding for water at considerably lower rates, and a comparison of the rates established in this case with the rates in effect on irrigation companies of a like nature operating in this vicinity and other parts of the State, showing that these rates are not unreasonable for the service rendered, application for rehearing denied.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

Sacramento Valley West Side Canal Company, and William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company, have each filed a petition for rehearing herein. The grounds urged in each of these petitions are substantially the same.

Petitioners no longer take the position that Sacramento Valley West Side Canal Company is not a public utility. Neither is any claim made that any of the complainants in Case No. 673 are not within the area to the service of which the water system of the defendants has been dedicated. The petitions urge only one point, namely, that the rates established by this Commission are not sufficiently high.

Sacramento Valley West Side Canal Company requested that, in case this Commission should find that the company is a public utility, the Commission should establish all the rates to be charged by the company. The rates thus established are as follows:

1. Flat rates: For rice, $7.00 per acre per annum; for all other crops, $2.00 per acre per annum; or,
2. Measured rates: Where water is measured, the rate shall be $2.00 per acre per annum for the use of 1½ feet per acre during the irrigating season, with an additional charge of $1.50 per acre-foot per annum for each acre-foot used in excess of 1½ acre-feet.

The measuring device may be installed at the option of the water company, in which event the cost thereof must be borne by the water company, or it may be installed at the option of the consumer, in which event the consumer will pay the cost.

Petitioners contend that it is the duty of this Commission to establish such rates as will yield to the water company operating and maintenance expenses, an allowance for depreciation and a full return on the fair value of the property used and useful in the public service. Petitioners contend that the rates established by the Commission are not sufficient for this purpose.

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While it is true that a rate fixing authority must consider all the matter to which petitioners refer, petitioners overlook another principle which is equally well established, namely, that the public is entitled to demand that no more be exacted from it for a public service than the service rendered is reasonably worth. In other words, a rate fixing authority can not look solely to the position of the utility. It must look also to the position of the present and prospective consumers of the utility. See *Covington and L. Turnpike Road Co.* vs. *Sanford,* 164 U. S. 578, and *Smythe* vs. *Ames,* 169 U. S. 464, 547.

What we have just said is particularly applicable to irrigation projects, in which large installations are frequently necessary at the outset and in which it is impossible, either as a matter of ethics or of practical operation, for the few customers during the first years of the utility's operations to pay rates high enough to yield operating and maintenance expenses, depreciation and a full return on the investment. In fact, persons acquainted with the actual operations of irrigation systems in this State and elsewhere, know that it is common experience that during the first few years of irrigation projects, the rates paid are frequently not high enough to yield even maintenance and operating expenses. If attempt were made to apply the principle urged by petitioners herein, the rates would be so high that nobody could afford to buy land in the project, and hence the project would permanently be deprived of an opportunity to make good.

All irrigation projects in the West, whether they are Federal projects under the reclamation act, or public irrigation districts owned and operated by the people themselves, or public utilities, are founded on a recognition of the fact that during the first few years the rates, as a practical matter, can not be made high enough to yield a return on the investment and depreciation, in addition to maintenance and operating expenses. The Sacramento Valley West Side Canal Company is no exception to this general rule. As pointed out in the opinion of June 14, 1915, herein, the agreements entered into between Sacramento Valley Irrigation Company (the Kuhn land project) and purchasers of land, provide that Sacramento Valley Irrigation Company will assign and deliver to each purchaser of land one share of the capital stock of Sacramento Valley West Side Canal Company (the Kuhn Irrigation Company) for each acre of land purchased. The agreements further provide that the canal company shall have the right to levy the necessary assessments upon its stockholders, whether they use water or not. The agreements further provide as follows:

> "The company (Sacramento Valley Irrigation Company) prior to the year 1915 shall pay all such assessments, charges or expenses levied against the stock of the purchaser, if any, in excess of the sum of one dollar and fifty cents per acre per annum."

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It is thus provided that the settler should in no event pay more than $1 50 per acre per annum prior to the year 1915, by which time it was hoped that the project would be successful. As a matter of fact, the settler paid only 70 cents per acre in the year 1912, and 95.025 cents per acre in 1913. The deficits were paid by assessments on the stock of the water company, which stock was mostly owned by the land company. In other words, the land company in this case, as is necessarily true in all projects of this character, found it necessary to agree to reasonable water rates and to bear the deficits until the project could stand upon its feet. Petitioners now complain because this Commission has established rates which, as we shall hereinafter show, are on the average twice as high as the maximum rate which the Kuhn people themselves established in their contracts with the purchasers of land in the project, and at least three times as high as the charges which were actually assessed for water against the purchasers of land from the land company.

The principles to which we have referred, in addition to being those which necessarily must be applied in the practical development of an irrigation project, also have the sanction of the courts. The leading case on this point is *San Diego Land and Town Company* vs. *Jasper,* 189 U. S. 439. This is a case involving the rates established by the board of supervisors of San Diego County to be charged by San Diego Land and Town Company for water supplied from the Sweetwater project. In this case, at page 446, the Supreme Court of the United States said:

> "The supervisors, in determining the rates, assumed that the amount of water available for outside irrigation, apart from the amount used and paid for by National City, was enough for a little over six thousand acres, and on that point there is no serious dispute. Then they fixed the rate as if the company supplied these six thousand acres, although such was not the fact. Of course, the amount actually received for the water actually furnished was correspondingly less than the receipts as estimated by the supervisors upon their assumption. *If a plant is built, as probably this was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the Constitution requires that, say, two-thirds of the contemplated number should pay a full return.*"

The same principle was applied in *Southern Pacific Company* vs. *Bartine,* 170 Fed. 725, in which case, at page 767, the court said:

> "If a railroad is built into a new, sparsely settled territory, with a view of serving a large future population and developing business, the Constitution does not require the few people and the small business of the present time to pay notes which will yield

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an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

These principles are peculiarly applicable to the Sacramento Valley West Side Canal Company. The evidence shows that the project, when fully developed, will irrigate between 90,000 and 100,000 acres of land, using 1½ feet of water per acre. In the present condition of its main canal, without doing any further work in deepening or enlarging the main canal, as testified to by Mr. R. W. Hawley, this Commission's hydraulic engineer, the project is capable of irrigating 46,000 acres of land. As hereinafter indicated, a relatively small expenditure will enable the main canal to irrigate up to 90,000 or 100,000 acres. Notwithstanding this capacity of the project, the actual acreage irrigated in the year 1914 was only 12,265 acres. Mr. Hawley testified that, in his opinion, the canal system is built entirely out of proportion to the number of acres served. Instead of developing the project, unit by unit, as the lands were sold and the settlers moved on to the land, the canal has been extended to serve the entire acreage, with the exception of a few miles at the lower end. If the hopes of the Kuhn people for the speedy and complete settlement of their project had been realized, the case would be entirely different. However, as the situation has actually developed, we find a 100,000 acre project selling water to only 12,265 acres. The principles declared by the Supreme Court of the United States in the *San Diego Land and Town Company* case fit exactly the case of Sacramento Valley West Side Canal Company.

As pointed out in the opinion herein, the acreage sold by Central Canal and Irrigation Company, the predecessor of Sacramento Valley West Side Canal Company, was sold under contracts providing rates as follows:

3,873.53 acres at $1.00 per acre.
23.70 acres at 1.50 per acre.
2,147.93 acres at 2.00 per acre.
1,363.24 acres at 3.00 per acre.

Attention is drawn in this Commission's decision of June 14, 1915, to the fact that in the case of certain of the $1.00 contracts, where the settlers found themselves unable to comply with the provisions for payment for the land, the Kuhn people entered into new arrangements with reference to the land payments and voluntarily established a rate of $2.00 per acre. Attention has already been drawn to the fact that as to the remaining acreage under irrigation, the Kuhn people provided that the maximum rate to be paid by the settlers up to 1915 should not exceed $1.50 per acre.

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We desire now, for the purpose of comparison, to draw attention to the rates established by this Commission.

The water company is given the option of continuing a system of flat rates or of installing measured service. The flat rates, as established by this Commission, are $7.00 per acre per annum for rice and $2.00 per acre per annum for other crops. Petitioners entirely overlook the provision for the establishment of metered service and the increased rate which will result to the water company therefrom. The decision herein provides that if the water company installs metered service, it shall have the right to charge $2.00 per acre per annum for the use of 1½ feet per acre during the irrigating season, with an additional charge of $1.50 per acre-foot per annum for each acre-foot used in excess of 1½ acre-feet. Investigations of the Federal and State authorities show that for the purpose of irrigating alfalfa in the Sacramento Valley, alfalfa being the principal crop irrigated under the water company's system, it is necessary to apply between 2 and 2½ acre-feet per annum. This means that if the water company avails itself of the option to install measuring devices, it will derive a minimum revenue of $3.00 per acre from all alfalfa land under the system. This rate is twice the maximum rates specified in the Kuhn contracts as an inducement to secure settlers on the project, and three times the rate specified in many of the Central Canal and Irrigation Company contracts. Nevertheless, petitioners claim that they are not being fairly treated by this Commission.

We desire now to consider briefly certain of the claims presented by petitioners.

Petitioners state that this Commission, in its decision herein, made the statement that the rates established will not pay operating charges of the system now, and will never do so. There is nothing in this Commission's decision herein which in any way justifies this claim on the part of petitioners. While the Commission did say that there might be cases in which reasonable rates would not pay maintenance and operating expenses, particularly during the first few years of an irrigation project, the Commission did not intend to say, and did not say that this result would follow with reference to the system of Sacramento Valley West Side Canal Company. Petitioners refer with disapproval to the statement in the decision that such deficits as there may exist below a full return will have to be met by Sacramento Valley Irrigation Company, and that it is to the interest of this company to maintain the system so as to be able to sell to advantage the large acreage which the Kuhns bought and which they have not been able to sell. This is exactly what Sacramento Valley Irrigation Company has done in the past, and we do not see in what respect it is

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unfair to suggest that the company continue to do the very thing which it found necessary to do before its irrigation system was declared to be a public utility. Sacramento Valley Irrigation Company is the principal stockholder of the water company. In all irrigation projects, such deficits as exist below a full return on the property must be met by the stockholders of the water company until the project is settled and can take care of itself. It is not clear why the Kuhn project should be an exception to the general rule.

Petitioners present certain computations to show that the rates established by the Commission will not yield even maintenance and operating expenses, even though the 46,000 acres testified to by Mr. Hawley as the capacity of the system in its present condition, should take water. We desire to draw attention to a number of errors in these computations.

Referring first to maintenance and operating expenses, petitioners add 30 per cent to Mr. Hawley's estimate of $79,000.00 for 19,000 acres. Petitioners evidently overlook the fact that the operating and maintenance expenses for the irrigation of 46,000 acres of land will be but slightly in excess of the expenses for 19,000 acres, with the exception of the bill for the power; and even this bill will not increase ratably in proportion to the additional acreage, for the reason that the loss for evaporation and seepage will be proportionately much less for the irrigation of 46,000 than for the irrigation of 19,000 acres. Most of the loss which will result under these heads is already incurred in the operation of the system for the irrigation of 19,000 acres. Under the head of revenue, the petitioners entirely overlook the possibility of increasing the rate by measuring the water, which practice this Commission hoped the company would adopt for the purpose of conserving its water and reducing its expenses. As already pointed out, most of the land irrigated under this system is planted to alfalfa, and from this land the water company can secure a revenue of $3.00 per acre by simply installing measuring devices.

The complainants in Case No. 673 desire water approximately as follows:

For rice	7,483 acres
For alfalfa	2,615 acres
For alfalfa and trees	758 acres
For trees	45 acres

Assuming that water will be required for 7,000 acres of rice, using 4½ feet of water per acre, that alfalfa will use 2½ feet of water per acre, and that deciduous trees will use 1½ feet of water per acre, which figures are entirely safe, and further, that under this project, six acres of land are planted to alfalfa to one planted to deciduous trees, the

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revenue to be derived from 46,000 acres of land would be approximately as follows:

7,000 acres rice at $7.00	$49,000
14,000 acres alfalfa at $3.00	43,800
2,300 acres deciduous trees at $2.00	4,600
Total	$97,400

The foregoing acreage is equivalent to 46,000 acres of land, using 1½ acre-feet of water per annum.

Referring now to operating and maintenance expenses, and accepting Mr. Hawley's estimate of $79,410.00 for 19,000 acres, an addition of approximately $17,000.00 would be necessary under the head of cost of power, if the cost of power increased proportionately to the acreage irrigated, which assumption we have already shown to be incorrect. As the other expenses for maintenance and operation would not increase materially over those necessary for the irrigation of 19,000 acres, we are satisfied that the addition of $17,000.00 to the maintenance and operating expenses estimated by Mr. Hawley for 19,000 acres would be substantially correct, thus making a maintenance and operating expense of $96,410.00, as against a revenue of $97,400.00.

Mr. D. W. Ross, one of the water company's chief witnesses, testified that by the expenditure of the additional sum of $312,478.00, the system will be able to supply water to 90,000 acres of land. Thus, by the expenditure of a relatively small amount of additional money, the system would be placed in the position of earning a largely increased revenue, under the rates established by this Commission.

There is no ground in the Commission's decision for the claim that the rate of $7.00 per acre for rice was based on the agreements entered into by Sacramento Valley West Side Canal Company for the sale of water for rice at this rate. The $7.00 rate was established as being fair and reasonable on the evidence, and not because Sacramento Valley West Side Canal Company had agreed to this rate in its special contracts with a number of water users.

Petitioners complain because this Commission did not establish a definite value to be assigned to the water company's water rights. In view of the fact that water users on less than half the acreage for which this water system was constructed can not reasonably be expected to pay full returns on the entire project, it seems clear that the time has not yet come when a definite value must be assigned to the intangible elements of the water company's property. In pursuing this course, this Commission followed the testimony of Mr. D. W. Ross, the water company's own witness, who stated that no interest on any estimated value of water rights is claimed by the water company until sufficient revenues can be derived to cover the cost of maintaining and

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operating the system, together with interest on the amount actually invested.

In determining whether or not the rates established by this Commission are fair and reasonable, a comparison with the rates charged in other portions of the Sacramento Valley for the irrigation of the same character of crops will be instructive.

Sutter-Butte Canal Company, operating in Sutter and Butte counties, located on the other side of the Sacramento River from the lands under the project of Sacramento Valley West Side Canal Company, has established rates of $4.50 and $5.00 per acre for rice, and $1.50 and $2.00 per acre for other crops, principally alfalfa. In other words, for exactly the same crops which are raised and desired to be raised under the project of the water company herein, the rates charged by Sutter-Butte Canal Company are materially less than those authorized by this Commission herein.

Yolo County is located in the Sacramento Valley, immediately south of Glenn and Colusa counties, in which counties the water company's system is located. Bulletin No. 207 of the United States Department of Agriculture shows that 90 per cent of the acreage irrigated under this system in 1907 was alfalfa, and that the cost of water on the Moore Ditch, one of the principal ditches, was an average of $2.10 per acre for alfalfa, as contrasted with the rate of $3.00 which the water company herein can secure if it will measure the water.

Tehama County adjoins Glenn County on the north. Practically the same crops are raised in both counties. Coneland Water Company, under whose project the principal crop is alfalfa, has in effect a flat rate of $2.00 per acre per annum. The same rate is charged by Richfield Water Company.

Thus it will be seen that the rates actually charged for water in the counties to the north and the south of the counties in which the water company operates, on the west side of the Sacramento River, and in the counties directly across the Sacramento River on the east side thereof, are less than those authorized by the Commission herein. Attention might also be drawn to the fact that in the San Joaquin Valley, in which large amounts of alfalfa are raised in competition with the alfalfa produced in Glenn and Colusa counties, the following rates are in effect for an amount of water which is generally specified as being not to exceed 1/160 second-foot per acre per annum.

Fresno Canal and Irrigation Company and Consolidated Canal Company, 62½ cents and 75 cents per acre on contract and $1.00 without contract.

East Side Canal Company, $1.00 per acre per annum.

San Joaquin and Kings River Canal Company, $1.25 to $2.25 per acre per annum.

Crocker-Huffman Land and Water Company, $2.00 per acre per annum.

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An interesting sidelight is thrown on the situation by the fact that most of the territory served and capable of being served by the water company herein is underlaid with ground waters which are near the surface, and that a number of the complainants in Case No. 673 testified that if their rates were materially increased, they would sink wells and pump. The United States Geographical Survey and the State Engineering Department found in 1913-1914 that 40,859 acres of land were already being irrigated in the Sacramento Valley from 1,664 pumping plants.

This Commission should not be called upon to do an act which, from a practical point of view, would amount to an absurdity. In view of the rates which are being charged for water in the communities on all sides of the project of Sacramento Valley West Side Canal Company for the irrigation of crops identical with those irrigated on the water company's project, and also the possibility of sinking wells and pumping, it is clear that if this Commission should increase the rates to be charged by the water company above the relatively high rates already established herein, the net result would be that intending settlers desiring lands for irrigation would go to other projects, while a portion of the relatively few settlers who are now on the water company's project would pump water or entirely cease irrigation. All opportunity for the successful development of this project would be gone, and the bondholders now owning lands bought by the Kuhns under this project would find themselves unable to dispose of their lands to advantage.

Both in the original decision herein and on these petitions for rehearing, this Commission has gone into the matters presented at far greater length than is usual, for the reason that it has been our earnest desire to set forth all the facts fully, and to assist in constructive work. Protracted litigation has been the curse of irrigation in Glenn and Colusa counties. The time has come to stop litigating, to take a fresh start, and to settle the irrigation problem in Glenn and Colusa counties on a basis fair both to the water company and its existing and prospective consumers. After a careful review of these entire proceedings and a consideration of each point urged by the petitioners for rehearing, the Commission has reached the conclusion that the rates established by it are at least fair and reasonable to the water company, and that it would be folly to think of establishing rates which are higher. We may be permitted to express the hope that the water company will without further litigation accept the conclusions which have been reached after two careful examinations into the matter, and thus help do constructive work in the solution of the irrigation problem which is so vital to the people of Glenn and Colusa counties.

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After a careful consideration of the petitions for rehearing, we find that there is no merit therein. The petitions should be denied.

ORDER.

Sacramento Valley West Side Canal Company, and William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company, having filed petitions for rehearing herein, and careful consideration having been given to said petitions, and the Railroad Commission finding that there is no merit therein,

It is hereby ordered that said petitions be and the same are hereby denied.

It is further ordered that the rates established in the decision of June 14, 1915, herein, be made effective commencing with the coming irrigation season, subject, as provided in said decision, to compliance by Sacramento Valley West Side Canal Company, and William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company, with all the terms and conditions of the order of June 14, 1915.

Dated at San Francisco, California, this 9th day of October, 1915.

Decision No. 2823, grade crossing; not printed. See end of volume.

DECISION NO. 2824.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY AND WEST SACRAMENTO ELECTRIC FOR AN ORDER AUTHORIZING THE PACIFIC GAS AND ELECTRIC COMPANY TO SELL, GRANT AND TRANSFER TO THE WEST SACRAMENTO ELECTRIC A CERTAIN ELECTRIC TRANSMISSION LINE, TOGETHER WITH TRANSFORMERS, SWITCHES, AND ELECTRIC APPLIANCES SITUATE IN THE COUNTY OF YOLO, STATE OF CALIFORNIA.

Application No. 1618.

Decided October 9, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Written request by both applicants for the dismissal of the proceeding entitled as above having been received,

It is hereby ordered that this application be and it is hereby dismissed.

Dated at San Francisco, California, this 9th day of October, 1915.

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DECISION NO. 2825.

IN THE MATTER OF THE APPLICATION OF F. G. AIRY, AGENT OF AMERICAN EXPRESS COMPANY, GREAT NORTHERN EXPRESS COMPANY AND WELLS FARGO AND COMPANY EXPRESS, FOR AN ORDER AUTHORIZING AN INCREASE IN RATES ON FIRST AND SECOND CLASS EXPRESS SHIPMENTS WEIGHING LESS THAN ONE HUNDRED POUNDS BETWEEN ALL POINTS IN CALIFORNIA.

Application No. 1847.

Decided October 11, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

Wells Fargo & Company has petitioned for rehearing on this Commission's order of September 10, 1915, denying authority to increase the company's rates on California business. As was pointed out in this Commission's opinion of September 10, 1915, Wells Fargo & Company is earning at least 22.3 per cent on the fair value of its property devoted to its California state business. The increase asked for would result in an earning in excess of 36 per cent on the company's California state business.

As was pointed out in the opinion of September 10, 1915, Wells Fargo & Company has made no claim herein that the express rates on California state business heretofore established by this Commission are not fair, reasonable and amply remunerative. The sole basis for the application herein was the desire of Wells Fargo & Company to maintain, with reference to the particular business which was the subject matter of the inquiry herein, uniformity of rate schedules as between interstate and California state business.

Wells Fargo & Company bases its request for a rehearing herein on certain claims in general language with reference to the gross revenue and operating expenses in connection with its California business and the value of its property used and useful in that business. These matters were all considered by this Commission with thoroughness and in detail, in its decision dated August 1, 1913, in Case No. 122. We at that time found against the claims of Wells Fargo & Company in connection with these matters, and we see no reason to change our opinion.

Wells Fargo & Company states in its petition that it is not as yet prepared to present evidence with reference to its present gross and net revenue, operating expenses, and property, but that it hopes to have this evidence in shape within a reasonable time. No reason has

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been shown for granting a rehearing in the present proceeding. If Wells Fargo & Company hereafter is in a position to present the evidence with reference to its present business, and is still of the opinion that the rates which were established by this Commission, and which have been accepted by the company without question to the present time, are unjust and unreasonable, Wells Fargo & Company may file a new petition asking for such relief as the company believes fair and reasonable at the time of filing such petition.

ORDER.

Wells Fargo & Company having filed a petition for rehearing in the above entitled proceeding, and careful consideration having been given to the same, and no good reason appearing why a rehearing should be granted,

It is hereby ordered that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 11th day of October, 1915.

Decision No. 2826, grade crossing; not printed. See end of volume.

DECISION NO. 2827.

EDWIN LEIBFREED

vs.

DAVIS WATER COMPANY.

Case No. 857.

Decided October 22, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Written request having been received from complainants in the above entitled proceeding that this proceeding be dismissed,

It is hereby ordered that the same be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 22d day of October, 1915.

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DECISION No. 2828.

IN THE MATTER OF THE APPLICATION OF F. W. GOMPH, AGENT, PACIFIC FREIGHT TARIFF BUREAU, FOR AUTHORITY TO INCREASE RATES FOR ARTICLES LOADED ON OPEN CARS AND ON ARTICLES TOO LARGE TO BE LOADED THROUGH SIDE DOOR OF THIRTY-SIX FOOT CARS.

Application No. 1832.

Decided October 22, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Under date of October 20, 1915, the Commission is advised by applicant herein that as the Interstate Commerce Commission has not yet rendered the decision on the rehearing of Rule 20 of Western Classification No. 53, which relates to this same subject, the hearing upon said application for rehearing having been held on July 30, 1915, at Chicago, and as this application provides for permission to cancel the rule of the Exception Sheet permitting Rule 20 of the Western Classification to apply after the date of such cancellation, no progress can be made until it is known whether the Interstate Commerce Commission, in the decision to be rendered on the rehearing of Rule 20, will order any change made in that rule, in consequence of which applicant requests that this application be dismissed. In view of this request, which the Commission considers a reasonable one,

It is hereby ordered that Application No. 1832 be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 22d day of October, 1915.

DECISION No. 2829.

IN THE MATTER OF THE APPLICATION OF FARMERS CO-OPERATIVE UNION FOR AUTHORITY TO INCREASE THE RATES OF STORAGE CHARGES ON RICE AND OTHER GRAIN, IN BIGGS, BUTTE COUNTY, CALIFORNIA.

Application No. 1875.

Decided October 22, 1915.

Applicant, operating a warehouse for the storage of grain in the city of Biggs, applies for permission to increase its storage charges and upon a showing that the present rates do not provide sufficient revenues to cover operating expenses and a return upon the investment, the following schedule is established: Rice

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80 cents per ton for first two months, $1.00 per ton per season; rice, cribbed, $1.50 per ton for first two months, $1.70 per ton per season; other grain, 75 cents per ton for first two months, 90 cents per ton per season. These charges to cover all incidental services such as weighing, piling, resacking, etc., and to become effective on rice immediately, on other grains for the season of 1916.

Henry Ingram, for Applicant.

W. E. Barnard, in propria persona, Protestant.

J. D. Jones, in propria persona, Protestant.

REPORT OF THE COMMISSION.

This is an application by Farmers Co-operative Union, a corporation, hereinafter referred to as the "warehouse company," for permission to increase its rates for the storage of rice and other grain in its warehouse in Biggs, Butte County.

Applicant owns and operates a brick warehouse in the city of Biggs, having a storage capacity of approximately 6,000 tons of grain.

The rates at present charged by the warehouse company are as follows:

For the storage of rice piled in the ordinary way:
$0.40 per ton for the first month.
.25 per ton for each additional month.
1.00 per ton for the season ending May 20th.
For the storage of all other grain:
$0.40 per ton for one month.
.50 per ton for two months.
.75 per ton for the season.

Applicant further assessed a charge of $2.00 per ton for the storage of all rice "ricked" or "cribbed" for the season ending in May, 1915.

The warehouse company introduced evidence as to its gross receipts and disbursements for the years ending June 1, 1912, 1913, and 1914, said statements showing average annual gross receipts amounting to $3,068.22 and average annual operating expenses (not including interest or depreciation) amounting to $5,327.53—an apparent annual average loss of $2,269.31.

The evidence further showed, however, that the company's president and manager was crediting himself with a salary of $1,800.00 per year, and that there were a number of items charged to operating expenses which should have been charged to capital account. It appears that this officer has several other important business interests and apparently devotes only about one-fourth of his time to the management of the warehouse. We find that a salary of $600.00 per year is at least a liberal one.

No figures were given as to the operating expenses for the season ending June 1, 1915, but using the preceding season as a basis we find that the operating expenses of $5,135.91, claimed by applicant, could

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be cut down to $3,655.66 by the elimination of $1,200.00 of the manager's salary and various other items improperly charged to operating expenses.

Evidence was introduced to the effect that Mr. W. M. Doty, the warehouse company's president, used a considerable floor space for the storage of his own machinery and hardware and in the operation of a small private feed mill in said warehouse. We find that Mr. Doty is receiving facilities from the warehouse reasonably worth $175.00 per year, and that the warehouse company should charge, and receive from him, that sum so long as he continues to use his present amount of space.

The figures thus revised show the average annual receipts for the above three years to be $3,243.22 and the reasonable and proper operating expenses, including taxes, to be approximately $3,650.00. None of these figures includes interest or depreciation.

Evidence was introduced at the hearing to the effect that the warehouse was built in 1884 at a cost of $20,500.00 for the building alone, in addition to which $1,500.00 was spent for the land on which the building is located, $1,500.00 for a spur railroad track, and $1,000.00 for grading and filling.

The land comprises about five acres, but not more than one-third of this is at present covered by the warehouse or the necessary space for roadways surrounding it. On the other hand, a certain amount of the remaining land was used for furnishing earth for the fill. We find the reasonable value of the land necessary for and appurtenant to the warehouse, including the land upon which it is situated, to be $750.00.

A few years ago a concrete floor was substituted for the wooden floor over a portion of the building, at a cost of $1,000.00. Additional charges to the capital account, such as trucks, an electric grain elevator and installation of electric wiring bring the total cost new of all the warehouse company's property, according to the figures furnished by it, up to $25,250.00.

Considerable conflicting evidence was introduced as to the additional cost of storing rice where it is "cribbed" or "ricked," on account of both the additional labor and additional space required in this form of piling. This conflict in the evidence was due in large part no doubt to the fact that this method of storage is a new one in California and at best neither side could do more than make rather theoretical estimates. The warehouse company asked that the rates be increased an additional $1.00 per ton for rice so stored, but from all the evidence introduced we have concluded that an increase of 70 cents per ton is as fair an estimate of the proper charge for this special service as the Commission is able to make at this time.

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There was also considerable evidence introduced as to when the storage season on rice should commence, the warehousemen insisting that the season ought to be the same as that for grain, which commences June 1st, while the protestants claimed that it should not commence until September 15th. We find that the season ought to commence not earlier than August 15th, which will give the farmers an additional two and one-half months in which to sell their rice, without inflicting any hardship upon the warehousemen.

Evidence was also introduced by applicant to the effect that more service is required in the handling of rice than in the handling of other grain, and particularly that more care has to be exercised when the rice received is even slightly damp or green, and also that it is the custom of the rice buyers to sample in the warehouse practically every sack of rice bought before accepting delivery. This necessitates considerable additional handling.

Some evidence was introduced as to the management not having been efficient in the past and the service not having been always satisfactory. We are basing the rates hereinafter authorized upon the assumption that henceforth the warehouse company will render absolutely first-class service in every respect, and that it will employ all reasonable means to prevent a recurrence of congestion in the handling of rice at its warehouse.

ORDER.

Farmers Co-operative Union, a corporation, having applied to the Railroad Commission for an order authorizing an increase in rates for the storage of rice and other grain in its warehouse at Biggs, Butte County, and a public hearing having been held upon said application, and the said application having been submitted and being now ready for decision, the Commission hereby finds as a fact that the rates hereinafter authorized are just and reasonable rates to be charged by said applicant.

Basing its conclusions upon the foregoing finding of fact and on the other findings which are contained in the opinion which precedes this order,

It is hereby ordered that applicant be authorized to charge and collect the following rates, viz:

For storage of rice piled in the ordinary manner:
$0.80 per ton for the first two months.
1.00 per ton for the season, from August 15th to and including the 14th of the following August.
For storage of rice when "ricked" or "cribbed":
$1.50 per ton for the first two months.
1.70 per ton for the said season.
For the storage of all other grain:
$0.75 per ton for the first two months.
.90 per ton for the season, from June 1st to and including May 31st.

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It is further ordered that the collection of this rate shall be conditioned upon the rendering of first-class service comprising all the facilities heretofore given, such as receiving, weighing, piling, carrying in storage and such other service as it is customary for warehousemen similarly situated to give, and in addition thereto all necessary resacking, including the furnishing of sacks, or otherwise placing of rice and other grain in proper condition for shipment.

It is further ordered that the rates herein authorized shall become effective upon all rice immediately upon filing with the Railroad Commission a schedule, in duplicate, showing the same and the conditions upon which they may be collected, and upon all other grain for the season commencing June 1, 1916; provided that the warehouse company shall, within thirty (30) days from the receipt of a certified copy of this order, file with the Railroad Commission said schedule, in duplicate, showing the rates on both rice and other grain.

Dated at San Francisco, California, this 22d day of October, 1915.

DECISION No. 2830.

IN THE MATTER OF THE APPLICATION OF T. B. CHANNON AND T. J. LONG FOR AN ORDER AUTHORIZING AN INCREASE IN THE RATES OF STORAGE CHARGES ON RICE AND OTHER GRAIN IN GRIDLEY.

Application No. 1873.

Decided October 22, 1915.

Applicants, operating a warehouse in the city of Gridley for the storage of grain, apply for permission to increase their present schedule of rates, contending that it is at present insufficient to provide a fair return on the business, and it appearing that an increase is justified, the following schedule is established to become effective for rice immediately and for other grains, beginning season of 1916: Rice, 80 cents per ton for first two months, $1.00 per ton per season; rice, "cribbed," $1.50 per ton for first two months, $1.70 per ton per season; other grains, 75 cents per ton for first two months, 90 cents per ton per season.

Henry Ingram, for Applicant.

REPORT OF THE COMMISSION.

This is an application by T. B. Channon and T. J. Long, proprietors of three warehouses at Gridley, Butte County, for permission to increase their rates for the storage of rice and other grain.

Applicants own the warehouses known as Gridley Warehouse No. 1 and No. 2, having a storage capacity of approximately one thousand and twenty-five hundred tons of grain, respectively, and they are the

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lessees of the warehouse known as Stone's Brick Warehouse which has a storage capacity of approximately 2,000 tons of grain. The rates now charged by applicants for storage are as follows:

On wheat, barley, oats and grain:
$0.50 per ton from June 1st to January 1st.
$0.65 per ton for the entire season.
On rice:
$0.50 per ton for first month.
$0.75 per ton to January 1st.
$1.00 per ton for entire season.

In both cases applicants charge $1.00 per ton additional on all partial deliveries.

From the evidence it appears that the average annual gross receipts for the years ending June 1, 1912, 1913, and 1914 were $3,112.65, and that the average annual operating expenses, exclusive of interest and depreciation, for said period was $2,618.08, leaving an average annual surplus of receipts over disbursements of $494.57. Applicants testified that the land upon which the warehouses were located, consisting of approximately 1.6 acres (the whole of two city blocks), was worth $4,000.00, and evidence was introduced to the effect that the reproduction value new of warehouses Nos. 1 and 2, together with the wagon scales and scale house, is $15,230.55. Applicants lease the warehouse known as Stone's Brick Warehouse at an annual rental of $400.00, under a lease which requires applicants to make all the repairs necessary upon said building.

Although proof was made that the notice of this application was mailed on September 25th to every customer of applicants, no one appeared to protest against the rates being increased and we find that applicants are entitled to have their rates increased as hereinafter set forth. Applicants are apparently rendering satisfactory service to their customers, and the only salaries they have added to the expense accounts which they have not actually paid in cash are an allowance of $25.00 per month apiece to themselves for their personal services. We find this allowance to be entirely reasonable, as Mr. Long attends to most of the office work and Mr. Channon spends a large part of his time in the warehouse during the busy season, overseeing the laborers and assisting personally in handling the grain.

Perhaps the most difficult problem presented by the evidence is the fixing of proper rates for the storage of rice which is "ricked" or "cribbed." There is no question but that considerably more labor and space are required in stacking and storing rice when it is ricked or cribbed than when it is stacked in the ordinary manner. Applicants ask for an increase in rates of $1.00 per ton for rice so stored, but they themselves have had so little experience in this method of storage that their testimony as to the additional cost was necessarily vague.

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We are allowing an additional charge for rice stored in this manner of 70 cents per ton, which from the evidence thus far presented to this Commission seems reasonably fair to both sides. We also find that the storage season for rice should be later than the storage season for grain, as the rice crop is harvested later in the season.

ORDER.

T. B. Channon and T. J. Long, warehousemen, having applied to the Railroad Commission for an order authorizing an increase in rates for the storage of rice and other grain in their warehouse at Gridley, Butte County, and a public hearing having been held upon said application, and the said application having been submitted and being now ready for decision, the Commission hereby finds as a fact that the rates hereinafter authorized are just and reasonable rates to be charged by said applicants.

Basing its conclusions upon the foregoing finding of facts and on the other findings which are contained in the opinion which precedes this order,

It is hereby ordered that applicants be authorized to charge and collect the following rates, viz:

For storage of rice piled in the ordinary manner:
$0.80 per ton for the first two months.
$1.00 per ton for the season, from August 15th to and including the 14th of the following August.
For the storage of rice when "ricked" or "cribbed":
$1.50 per ton for the first two months.
$1.70 per ton for the said season.
For the storage of all other grain:
$0.75 per ton for the first two months.
$0.90 per ton for the season, from June 1st to and including May 31st.

It is further ordered that the collection of these rates shall be conditioned upon the rendering of first-class service as heretofore given, such as receiving, weighing, piling, carrying in storage, and such other service as it is customary for warehousemen similarly situated to give, and in addition thereto all necessary resacking, including the furnishing of sacks, or otherwise placing of rice and other grain in proper condition for shipment.

It is further ordered that the rates herein authorized shall become effective upon all rice immediately upon filing with the Railroad Commission a schedule, in duplicate, showing the same and the conditions upon which they may be collected, and upon all other grain for the season commencing June 1, 1916, provided that applicants shall within thirty days from the receipt of a certified copy of this order file with the Railroad Commission said schedule in duplicate showing the rates on both rice and other grain.

Dated at San Francisco, California, this 22d day of October, 1915.

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DECISION No. 2831.

A. W. COX ET AL.

vs.

SANTA MARIA GAS AND POWER COMPANY.

Case No. 787.

Decided October 22, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Written request having been received from complainants in the above entitled proceeding that this complaint be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 22d day of October, 1915.

DECISION No. 2832.

IN THE MATTER OF THE APPLICATION OF INDUSTRIAL TERMINAL RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUANCE OF STOCK.

Application No. 1803.

Decided October 22, 1915.

Applicant, intending to construct a short switching road in the city of Los Angeles, applies for and is granted permission to issue 55 shares of its capital stock of the par value of $100.00 per share, such stock to be issued at par, $500.00 of the proceeds thereof to be used to defray organization expenses, the balance for rights of way.

Gurney E. Newlin, for Applicant.

Albert Lee Stephens, for city of Los Angeles.

REPORT OF THE COMMISSION.

This is an application of Industrial Terminal Railway Company of Los Angeles for authority to issue $5,500.00 of capital stock to pay for organization expenses and rights of way.

Applicant was organized June 4, 1915, for the purpose of constructing a railroad two miles in length in the city of Los Angeles along the following described route:

> "Commencing at a point in the easterly line of Alameda street in the city of Los Angeles, north of Aliso street; thence east and

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north to Alhambra avenue, at or near its intersection with the easterly bank of the Los Angeles River, together with such other and further appendages, adjuncts, and terminal facilities to the hereinbefore described lines of railroad, including sidings, turnouts, industrial spurs, spur tracks and connections, as the board of directors of said corporation may from time to time direct."

The company's articles of incorporation are general and empower the corporation to construct, maintain and operate railroads, power plants, steamships, wharves, docks, warehouses, etc. The incorporators and subscribers to its capital stock are as follows:

Incorporators	Address	Subscription
L. E. Hanchett	San Francisco	$5,100 00
E. W. Taylor	Oakland	100 00
L. Smith	San Francisco	100 00
E. B. Carroll	Los Angeles	100 00
Gurney E. Newlin	Los Angeles	100 00

Applicant has an authorized capitalization of $50,000.00, divided into 500 shares of the par value of $100.00 each. To date only enough stock has been subscribed to qualify directors and to comply with the provisions of the Civil Code relating to the incorporation of railroad companies. The cost of securing rights of way will be greatly in excess of the amount secured from the sale of stock herein applied for, and the purpose of the present application is merely to provide for the issuance of sufficient stock in order that the company's incorporation may be perfected. Applicant desires to issue this stock at par and states that $5,500.00 in cash has been paid to the treasurer therefor.

At the present time applicant reports that it has no indebtedness and that it has made no contracts for rights of way. Witness for applicant stated, however, that portions of the right of way have been secured and are ready to be turned over to the corporation at a later date.

At the first hearing of this application, the city of Los Angeles, through its attorney, appeared and asked that the final determination of this application be postponed until it had been given an opportunity to become more fully advised as to applicant's plans. Acting on this request, the hearing was postponed until a later date.

At the second hearing, the city of Los Angeles was not represented, but this Commission has since been advised that all opposition to the granting of this application has been withdrawn.

After consideration of the evidence submitted by the applicant, it appears that this application should be granted, subject, however, to the terms of the following order:

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ORDER.

Industrial Terminal Railway Company having applied to this Commission for authority to issue stock, as hereinbefore set forth, and a public hearing having been held, and it appearing to this Commission that applicant's request is reasonable and should be granted and that the purposes for which it is proposed to issue said stock are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Industrial Terminal Railway Company be and it is hereby authorized to issue fifty-five (55) shares of its capital stock; five shares to be used for the purpose of defraying organization expenses and the remaining fifty shares to be used in acquiring rights of way for its railroad in the city of Los Angeles.

The authority herein granted is granted subject to the following conditions, and not otherwise:

(1) The stock herein authorized to be issued shall be issued so as to net applicant not less than its par value of $100.00 per share.

(2) Within thirty days after the issuance of any of the stock herein authorized, applicant shall make report of such issue to this Commission.

(3) The authority herein granted shall apply only to such stock as shall have been issued on or before April 1, 1916.

Dated at San Francisco, California, this 22d day of October, 1915.

DECISION NO. 2833.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND SOUTH EASTERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE RENEWAL OF A NOTE.

Application No. 1883.

Decided October 22, 1915.

Applicant having a note outstanding in the sum of $25,000.00 applies for and is granted permission to issue a note of a like face value in renewal thereof, such note to be issued at its face value for an initial period of four months and renewed if applicant desires, provided that the initial period and renewals shall not exceed two years.

R. G. Dilworth, for Applicant.

REPORT OF THE COMMISSION.

This is an application of San Diego and South Eastern Railway Company, operating in San Diego County, for authority to issue a promissory note in the sum of $25,000.00.

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On August 26, 1912, applicant issued a 5 per cent one-day promissory note in the sum of $25,000.00 to the First National Bank of San Diego. The proceeds from this note were used to reimburse the company in part for additions and betterments made between March 2, 1912, and the date when the note was issued. These betterments included the purchase of certain real estate, additional rolling stock, etc. Subsequently, this note was renewed for a period of four months from November 6, 1914, interest being increased to 6 per cent per annum. Similarly, on March 6, 1915, and July 6, 1915, the note was again renewed, each time for a four months' period. Upon the last renewal of the note, the combined terms thereof exceeded by one day the time within which notes may be issued without this Commission's consent. Applicant in its petition states that this violation of the Public Utilities Act arose through inadvertence, and asks to have the note dated July 6, 1915, ratified.

Section 52 (*d*) of the Public Utilities Act provides in part as follows:

> "All stock, and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility issued without an order of the Commission authorizing the same then in effect shall be void."

This Commission has no power to make valid an act which is absolutely void. In this case, it appears that the note in question was given for capital purposes, and that its renewal in violation of the Public Utilities Act was unintentional. Under these circumstances, it appears reasonable that applicant should be permitted to cancel the note illegally issued and execute a new note in lieu thereof.

In addition to the note in question, applicant on June 30, 1915, had outstanding promissory notes as follows:

Date of issue	Amount	Date of maturity	Rate of interest
July 12, 1912	$10,000 00	July 13, 1912	5%
April 17, 1913	102,369 53	Apr. 18, 1913	6%
March 31, 1914	124,847 62	Sept. 30, 1914	6%
April 30, 1914	30,063 33	Oct. 30, 1914	6%
July 31, 1914	15,035 00	Jan. 31, 1915	6%
September 30, 1914	20,050 83	Oct. 1, 1915	6%
October 31, 1914	10,030 00	Nov. 1, 1915	6%
Total	$312,396 31		

All of these notes are payable either to J. D. Spreckels & Brothers Company, or to J. D. and A. B. Spreckels Securities Company. The applicant has no bonds outstanding, and its other indebtedness as of June 30, 1915, consists of:

Audited accounts and wages payable	$43,533 83	
Unmatured interest accrued	6 94	
		$43,540 77

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ORDER.

San Diego and South Eastern Railway Company having applied to this Commission for authority to issue a promissory note as hereinbefore set forth, and a public hearing having been held and it appearing to this Commission that applicant's request is reasonable and should be granted, and that the purposes for which it is proposed to issue said note are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that San Diego and South Eastern Railway Company be and it is hereby authorized to issue for a period of two years from July 6, 1915, a promissory note in the sum of $25,000.00, payable to First National Bank of San Diego. The order herein made is granted upon the following conditions, and not otherwise:

(1) The note herein authorized shall be issued only for the purpose of taking up a similar note issued without authority from this Commission.

(2) Applicant shall not pay more than 6 per cent interest per annum on the note herein authorized.

(3) Applicant may issue the note herein authorized for periods of four months, and thereafter from time to time renew the note periodically without further authority from this Commission, provided that the terms for which the note is originally issued, plus the term of the renewals shall not exceed two years.

(4) Within thirty days after the issuance or renewal of the note herein authorized, applicant shall make report of such issue or renewal to this Commission.

(5) The authority herein granted is conditioned upon the payment of the fee prescribed under the Public Utilities Act.

(6) The authority herein granted shall apply only to such notes as shall have been issued on or before April 1, 1917.

Dated at San Francisco, California, this 22d day of October, 1915.

Decisions Nos. 2834 and 2835, grade crossings, not printed. See end of volume.

DECISION NO. 2836.

IN THE MATTER OF THE APPLICATION OF ISAIAH HARTMAN, A PUBLIC UTILITY OPERATING UNDER THE NAME OF LORENZO WATER COMPANY, TO SELL ITS WATER PLANT AND SYSTEM TO JACOB HARTMAN.

Application No. 1834.

Decided October 23, 1915.

Isaiah Hartman and Jacob Hartman apply jointly for permission to transfer a certain water system serving the town of Lorenzo from the former named

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party to the latter for a consideration of $5,000.00, and it appearing that the value of this system does not exceed the sum of $2,064.00, applicants authorized to transfer such system for that amount.

Isaiah Hartman, for Lorenzo Water Company.

Jacob Hartman, in propria persona.

REPORT OF THE COMMISSION.

This is a proceeding to fix and determine the just compensation to be paid Isaiah Hartman for the water system and rights of the Lorenzo Water Company by Jacob Hartman.

The Lorenzo Water Company supplies the unincorporated town of Lorenzo. The town adjoins Boulder Creek, situated in the Santa Cruz mountains, and consists of permanent homes and summer cottages. There are some fifty to sixty consumers served.

The water is diverted from Molaskey and Perry creeks, and after being stored in tanks it is carried through pipes and distributed by gravity. A small concrete dam diverts the water and one hundred feet of small flume carries it into a tank on Molaskey Creek. There are also two large tanks of a capacity of 20,000 and 30,000 gallons, respectively, near Perry Creek, which are used for storage in order to give good pressure in case of fire.

The petition filed by applicant alleges, in effect, that he has been at all times mentioned in the application, for a long time prior thereto, and now is engaged in the business of supplying water to the unincorporated town of Lorenzo, Santa Cruz County, and to the inhabitants thereof. That the Lorenzo Water Company is unincorporated, but such name has been used with the business conducted by applicant and by his predecessor. That applicant bought the property of the Lorenzo Water Company at foreclosure sale on February 9, 1914, and has since that time supplied water to the inhabitants and to the town of Lorenzo; that the applicant is now engaged in other business, taking all of his time, and desires to enter into the sale of the Lorenzo Water Company.

A public hearing was held on this proceeding August 25, 1915, in Boulder Creek, Santa Cruz County.

At the hearing the hydraulic engineers of the Commission submitted an appraisal of the physical properties of the company, in which it was estimated that the cost new of said properties was $3,451.00, and that the cost less depreciation is $1,564.00. No other evidence was submitted as to the value of this plant and no exception was taken as to the appraisal as submitted by the Commission's engineers.

All values other than those of the physical properties, such as the easements, water rights, and all other elements which are necessary to determine the present value of the property sought to be sold, are of doubtful value. We have made, however, an allowance of $500.00 for them, which, in our opinion, amply covers any and all value which

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may be found in the company aside from its physical properties. This gives to the entire plant a present value of $2,064.00.

ORDER.

Isaiah Hartman, doing business under the fictitious name and style of Lorenzo Water Company, having applied to the Commission for permission to sell his water plant and system to Jacob Hartman for the sum of $5,000.00, and the Commission having fully considered the evidence presented in the case,

It is hereby ordered that Isaiah Hartman, a public utility doing business under the name of Lorenzo Water Company be and he is hereby authorized to sell to Jacob Hartman for the sum of $2,064.00 the following described property, to wit:

All water rights and rights to water heretofore appropriated and belonging to the Lorenzo Water Works, on said southeast quarter of said section thirty (30), reserved by said Joseph W. Peery in and by that certain deed to Samuel H. Rambo and Daniel Hartman, dated December 27th, A. D. 1888, and recorded in the office of the county recorder of said county of Santa Cruz in volume 66 of deeds, at page 112 *et seq.*

The Lorenzo Water Works now and heretofore supplying the said town of Lorenzo with water, including all water and rights to water, rights, easements, and privileges appertaining thereto, together with all pipes, hydrants, reservoirs, tanks, flumes, aqueducts and conduits, franchises, rights of way and all other matters and things connected with and belonging to said Lorenzo Water Works.

The consideration of $2,064.00 which Jacob Hartman is herein authorized to pay for the above described property of Isaiah Hartman, doing business under the fictitious name and style of Lorenzo Water Company, shall not be taken before this Commission, or any other public authority, as representing for rate fixing or other purposes the present value of the property of Lorenzo Water Company herein authorized to be transferred.

Dated at San Francisco, California, this 23d day of October, 1915.

DECISION NO. 2837.

IN THE MATTER OF THE APPLICATION OF WEST SIDE GAS COMPANY FOR AN ORDER AUTHORIZING AN INCREASE IN RATES FOR NATURAL GAS IN THE CITY OF TAFT.

Application No. 1787.

Decided October 23, 1915.

Applicant, distributing natural gas in the city of Taft, applies for permission to increase its present schedule of rates, contending that at present they are

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unremunerative. The Commission heretofore, in connection with a complaint of the city of Taft, established rates for applicant on a basis that the business would continue to increase in the future as it had in the past. Instead, during the last year, it has fallen off considerably which, together with several additional unlooked for conditions, warrant an increase.

Held, The following schedule established to become effective within thirty days: Minimum $1.00 per month; first 7,500 cubic feet, 75 cents per 1,000; next 17,500 cubic feet, 60 cents per 1,000; next 50,000 cubic feet, 45 cents per 1,000; next 75,000 cubic feet, 35 cents per 1,000.

Joseph McDonald, for Applicant.

Charles del Bonbio, for City of Taft, Protestant.

REPORT OF THE COMMISSION.

This is an application by the West Side Gas Company, hereinafter referred to as the "gas company," for an order authorizing an increase of its rates for natural gas in the city of Taft.

Applicant is a corporation engaged in the business of distributing and selling natural gas in the cities of Taft and Maricopa, Kern County.

The present rates were established by this Commission in Case No. 516, decided May 21, 1914, after an examination of the company's entire property and an apportionment of all of its overhead expenses, upon the basis of the respective sales of gas in each of these cities.

In the above mentioned decision (No. 1533) this Commission found that a fair value of that portion of the property of the gas company chargeable to the city of Taft was $18,592.36; and it is estimated that the operating expenses, interest and depreciation for the year ending June 30, 1915, would be as follows:

Fixed charges:		
Interest at 9 per cent	$1,673 31	
Depreciation (annuity)	1,361 59	
		$3,034 90
Operating expenses:		
Gas purchased (36,363,315 cubic feet at 7 cents)	$2,545 43	
Transmission	436 40	
Distribution	2,160 92	
Commercial	1,420 66	
General office salaries and expense	4,009 60	
Miscellaneous and general expense	2,488 70	
Taxes	776 14	
Total operating expenses		$13,837 85
Total		$16,872 75

This estimate was based on the assumption that the sales of the gas company would increase at the same rate during the year 1914 as they had increased during the year 1913, namely, 17.08 per cent. This rate

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of increase was computed from records showing that the consumption of gas in the city of Taft had been increasing steadily year by year, and apparently the officers of the gas company themselves expected the consumption of gas to continue to increase at approximately the same rate. As a matter of fact, however, instead of increasing 17 per cent the sales during the year decreased approximately 6 per cent and the gas company, therefore, filed this application.

The report of the gas company for the year ending June 30, 1915, submitted in evidence at the hearing, shows the following revenue and expenses for its business in the city of Taft:

Gross income from gas operations		$14,539 09
Operating expenses:		
Gas purchased	$2,360 53	
Transmission expense	366 53	
Distribution expense	2,855 31	
Commercial expense	2,445 91	
General office, salaries and expenses	3,579 59	
Miscellaneous and general expense	795 17	
Taxes	573 50	
Insurance	600 00	
Uncollectible bills	390 37	
		$13,966 91
Net income for interest and depreciation		$572 18

It appears that the actual loss of gas for said year, as shown by the amount purchased at wholesale compared with the amount sold to the gas company's consumers, was excessive. We can not allow the company to place upon its consumers the burden resulting from an unreasonably large loss; and accordingly we shall expect it to reduce this item materially in the immediate future. This Commission, in its former decision (No. 1533), estimated that the loss should not exceed 16⅔ per cent of the gas purchased at wholesale; and we see no reason for allowing the company any greater loss in the future.

From a study of the growth and decline of the demand for gas as shown by the number of consumers connected, it appears that the gas company's business has passed its maximum and that a steady decrease will continue for some time. This decrease is a general characteristic of all oil towns after a certain well-defined maximum has been reached, and it should be recognized in fixing rates in such districts.

The gas company's estimate of sales for the year ending June 30, 1916, amounting to 21,874,800 cubic feet, appears fair and reasonable considering this general decrease in consumption. Increasing this amount by 25 per cent for loss, gives a total of 29,166,400 cubic feet of gas to be purchased by the company at wholesale.

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From the evidence submitted we further find that the gas company's overhead expenses should be apportioned on the basis of 65 per cent for Taft and 35 per cent for Maricopa.

The following estimate of operating expenses chargeable against Taft, for the year ending June 30, 1916, was submitted by the gas company:

Gas purchased		$2,041 65
Transmission expense	$448 00	
Distribution expense	3,013 54	
Commercial expense	2,323 61	
Salaries and expenses of general officers	3,400 61	
Miscellaneous and general expense	397 59	
		9,583 35
Taxes	$612 24	
Insurance	188 98	
Uncollectible accounts	536 37	
		1,337 59
Total operating expenses		$12,962 59

The above includes an item of $380.00, covering the estimated cost of inspecting and repairing the company's mains in order to decrease the losses. Considering the fact that we are basing our estimates upon a 25 per cent loss, we do not think that the company should be credited with more than one-half of this amount.

The above estimate is based upon the gas company's present expense, which includes, among other items, a salary of $3,600.00 per year to its president and manager; directors' fees amounting to $360.00 per year and a secretary's salary of $360.00 per year.

Considerable evidence was introduced as to the salaries and wages in the oil fields being higher than in other localities, and evidence was also introduced to the effect that the manager's salary was too large. From all the testimony introduced we find that this salary is excessive, especially when taking into consideration the fact that the gas company's business is decreasing and that its total revenue will not exceed $25,000.00 per year. Under the circumstances we find that a salary of $225.00 per month for the gas company's manager is at least liberal and that the gas company should not pay more than this amount. We further find that the payment of $360.00 per year for the fees of the gas company's three directors is entirely unwarranted—the more so as the gas company is a close corporation, consisting of only three stockholders, each one of whom is a director, including Mr. J. G. McDonald, who receives a salary as the company's manager. We find that not more than $30.00 per year should be allowed for directors' fees. We furthermore find that no allowance should be made for a salary for the gas company's secretary, as all the duties of the secretary

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could easily be attended to by the manager or one of the other employees of the gas company; for this company at present has less than 700 consumers, and to handle this business it employs in its office force a collector and a bookkeeper or clerk in addition to its general manager.

We find, accordingly, that the following reductions in the gas company's expenses should be made:

Reduction in manager's salary	$900 00 per year
Reduction in directors' fees	330 00 per year
Elimination of secretary's salary	360 00 per year
Total	$1,590 00 per year

Of this amount 65 per cent, or $1,033.50, is chargeable to the Taft expenses.

Revising the former estimate in conformity with the above corrections, we have the following estimate of expenses for the coming year:

Gas purchased		$2,041 65		
Transmission, distribution, commercial and general and miscellaneous expenses	$9,583 35			
Less reduction in salaries	1,033 50			
Less half cost of repairing system	190 00			
		8,359 85		
Insurance		188 98		
Total operating expenses, less taxes			$10,590 48	
Interest at 10 per cent	$1,859 25			
Depreciation	1,361 60			
			3,220 85	
Sub-total			$13,811 33	
Increased 5¼ per cent for taxes			766 69	
				$14,579 02
Uncollectible accounts				480 00
Total				$15,059 02

The estimate of uncollectible accounts has been increased over that for the year ending June 30, 1915, owing to the peculiar conditions existing in the city of Taft, where the population is changing continually and where, according to the testimony, the loss from old customers is extremely heavy and steadily increasing.

We also find in this particular case that the interest allowed the gas company upon its investment should be increased from 9 per cent to 10 per cent, owing to the fact that in all probability the sales of gas will continue gradually but steadily to decrease, until a point may be reached in which it will be difficult for the company to earn more than its operating expenses.

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From all the evidence introduced we estimate that if the following rates were established in Taft, the gas company's receipts for the year would be approximately as follows:

	Rate	Consumption	Amount of gas	Revenue
First 7,500 cubic feet	75 cents	62½%	13,671,750	$10,254 11
Next 17,500 cubic feet	60 cents	16½%	3,609,375	2,165 62
Next 50,000 cubic feet	45 cents	14 %	3,062,500	1,378 13
Next 75,000 cubic feet	35 cents	7 %	1,531,200	535 92
				$14,333 78
Excess due to minimum ($1.00 per meter per month)				749 84
Gross income				$15,083 62
Estimated total charges				$15,059 02

While we shall grant applicant part of the increase it has asked for, we want it to understand that we are by no means satisfied with the manner in which it is running its plant. Other companies are furnishing natural gas under more or less similar conditions at much lower rates than those herein established, and we wish to warn applicant that if any such company should apply for a certificate of public convenience and necessity to enter the territory now served by applicant, and should offer to furnish gas at a material reduction and should show that it could make a reasonable profit in so doing, we could not deny the application.

ORDER.

West Side Gas Company having applied for an order authorizing an increase of its rates for natural gas in the city of Taft, Kern County, and a public hearing having been held on said application, and the matter having been submitted and being now ready for decision,

The Commission hereby finds as a fact that the applicant is entitled to have its rates increased and that the rates hereinafter set forth and established are just and reasonable rates to be charged by the West Side Gas Company for natural gas furnished to its customers in the city of Taft. Basing its conclusions upon the foregoing findings of fact and on other findings which are contained in the opinion which precedes this order,

It is hereby ordered that West Side Gas Company be and the same is hereby authorized to establish the following rates to be charged to its customers in the city of Taft for natural gas furnished at a pressure of from one (1) to one and one-half (1½) pounds per square inch above

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atmospheric pressure, said rates to be applicable to all consumers and to become effective November 1, 1915:

First 7,500 cubic feet, per month, 75 cents per 1,000 cubic feet.
Next 17,500 cubic feet, per month, 60 cents per 1,000 cubic feet.
Next 50,000 cubic feet, per month, 45 cents per 1,000 cubic feet.
Next 75,000 cubic feet, per month, 35 cents per 1,000 cubic feet.
Minimum charge, $1.00 per month per meter.

And it is further ordered that West Side Gas Company, within thirty days from the receipt of a certified copy of this order, file with this Commission said rates so established in compliance with this order.

Dated at San Francisco, California, this 23d day of October, 1915.

DECISION NO. 2838.

WESTERN ASSOCIATION OF SHORT LINE RAILROADS

vs.

E. M. HACKETT AND J. A. DEBARRE, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WICHITA TRANSPORTATION COMPANY.

Case No. 827.

Decided October 23, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

The Commission has given careful consideration to the petition for rehearing herein, but finds nothing therein to which full consideration was not given prior to the rendering of its Decision No. 2801 on September 30, 1915.

We find no reason for changing the conclusion heretofore reached. The petition should be denied.

ORDER.

Complainant in the above entitled proceeding having filed its petition for rehearing, and careful consideration having been given to the same and no good reason appearing why such petition should be granted,

It is hereby ordered that said petition be and the same is hereby denied.

Dated at San Francisco, California, this 23d day of October, 1915.

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Decisions Nos. 2839 and 2840, grade crossings; not printed. See end of volume.

Decision No. 2841.

IN THE MATTER OF THE APPLICATION OF NORTHWESTERN PACIFIC RAILROAD COMPANY AND CALIFORNIA WESTERN RAILROAD AND NAVIGATION COMPANY FOR ORDER AUTHORIZING THE LEASE OF A PORTION OF THE RIGHT OF WAY OF THE FORMER COMPANY FOR THE CONSTRUCTION AND OPERATION OF AN INDEPENDENT TRACK FROM A POINT ABOUT ONE-HALF MILE WEST OF WILLITS INTO THE WILLITS RAILROAD YARD, AND OF CERTAIN YARD AND STATION FACILITIES AT WILLITS.

Application No. 1505.

Decided October 25, 1915.

Report of the Commission.

Gordon, *Commissioner.*

SECOND SUPPLEMENTAL ORDER.

This Commission having previously made its order in this application granting permission to the two applicant companies to enter into a certain agreement for the joint use of facilities in and around Willits, referred to in that order as Exhibit "A," and the Commission afterwards having made a supplemental order in that matter on account of a revision in the agreement desired by the applicants, and both companies now having filed an agreement with a still further modification in the original agreement, which modification pertains to the payment of taxes, and it appearing to the Commission that there are no objections to the two companies at interest entering into the agreement which is now proposed,

It is hereby ordered that this revised agreement, filed with the Commission on October 14, 1915, be and the same hereby is approved as a substitute for the agreement filed with the Commission on March 3, 1915, and approved by the supplemental order in this proceeding made on March 25, 1915.

It is hereby further ordered that in all other matters the order of February 6, 1915, shall be in full force and effect.

Dated at San Francisco, California, this 25th day of October, 1915.

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DECISION No. 2842.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR RELIEF FROM THE PROVISIONS OF CHAPTER 494 OF THE CALIFORNIA LAWS OF 1915.

Application No. 1930.

Decided October 25, 1915.

REPORT OF THE COMMISSION.

Pacific Electric Railway Company having filed its petition asking that the Commission make its order authorizing said railway company to require or permit its motormen, conductors, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone line any order for the movement of any of its trains, and the Railroad Commission finding that said request is reasonable and should be granted,

It is hereby ordered that this application be and the same is hereby granted, and that said Pacific Electric Railway Company be and it is hereby authorized to require or permit its motormen, conductors, brakemen and trainmen to receive, deliver or transmit at any receiving or forwarding instrument of any telephone line any order for the movement of any of its trains.

Dated at San Francisco, California, this 25th day of October, 1915.

DECISION No. 2843.

IN THE MATTER OF THE APPLICATION OF JOHN P. COGHLAN, AS RECEIVER OF THE PROPERTIES OF NORTHERN ELECTRIC RAILWAY COMPANY, SACRAMENTO AND WOODLAND RAILROAD COMPANY, NORTHERN ELECTRIC RAILWAY COMPANY, MARYSVILLE AND COLUSA BRANCH, AND SACRAMENTO TERMINAL COMPANY TO BE RELIEVED FROM THE PROVISIONS OF CHAPTER 494, OF THE LAWS OF 1915.

Application No. 1920.

Decided October 25, 1915.

REPORT OF THE COMMISSION.

John P. Coghlan, as receiver of the properties of Northern Electric Railway Company, Sacramento and Woodland Railroad Company, Northern Electric Railway Company—Marysville and Colusa Branch,

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and Sacramento Terminal Company, having filed his petition asking that the Railroad Commission make its order authorizing him to require or permit engineers, conductors, brakemen and other trainmen on the railroads operated by him and hereinbefore mentioned, to receive, deliver and transmit by telephone, orders for the movement of trains, cars, engines and motors upon, over and along said railroads, and the Railroad Commission being of the opinion that said request is reasonable and should be granted,

It is hereby ordered that this application be, and the same is hereby, granted and that John P. Coghlan be, and he hereby is, authorized to require or permit any of the engineers, conductors, brakemen or other trainmen on the railroads operated by him and hereinbefore mentioned, to receive, deliver and transmit by telephone, orders for the movement of trains, cars, engines and motors upon, over and along said railroads as and when the same may be necessary.

Dated at San Francisco, California, this 25th day of October, 1915.

DECISION No. 2844.

IN THE MATTER OF THE APPLICATION OF VALLEY PIPE LINE COMPANY FOR AUTHORITY TO ISSUE STOCK.

Application No. 1246.

Decided October 25, 1915.

Applicant, engaged in the construction of a pipe line from the oil fields to Martinez, Contra Costa County, was heretofore authorized to issue 53,184 shares of stock of the par value of $100.00 per share at the direction of the Commission for the purposes of such construction, and present requirements necessitating the issuance of 7,187½ shares of such stock, supplemental order made authorizing such issuance and sale at not less than 80.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

SIXTH SUPPLEMENTAL ORDER.

This Commission on September 19, 1914 (Decision No. 1805), having authorized applicant to issue 53,184 shares of stock of the par value of $100.00 per share, and to use the proceeds in the construction of a pipe line from the property of the California Oil Fields, Limited, in Fresno County, to Martinez, in Contra Costa County; and this Commission in the above mentioned order having provided that said stock should not be issued until after applicant had filed detailed estimates

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of cost and received supplemental orders from this Commission for such issue; and this Commission in accordance with said provision having issued the following supplemental orders:

Supplemental Order No. 1, September 19, 1914, authorizing the issue of 650 shares of said stock;
Supplemental Order No. 2, November 5, 1914, authorizing the issue of 2,811½ shares of said stock;
Supplemental Order No. 3, December 22, 1914, authorizing the issue of 3,750 shares of said stock;
Supplemental Order No. 4, February 8, 1915, authorizing the issue of 3,750 shares of said stock; and
Supplemental Order No. 5, June 22, 1915, authorizing the issue of 18,975 shares of said stock.

And applicant now having presented to this Commission estimates and statements of cost as required by the Commission, justifying an issue of 7,187½ shares of capital stock,

It is hereby ordered that Valley Pipe Line Company be granted authority and it is hereby granted authority to issue 7,187½ shares of its capital stock of the par value of $100.00 per share, said stock being part of the 53,184 shares of the capital stock of this company heretofore authorized to be issued under certain conditions, as specified in this Commission's Decision No. 1805.

The authority herein is granted upon the following conditions and not otherwise:

1. Stock herein authorized to be issued shall be issued to Anglo-Saxon Petroleum Company at a price that shall yield the applicant not less than $80.00 per share.

2. The proceeds from the sale of the stock herein authorized to be issued shall be applied upon the cost of construction of that certain pipe line which the applicant has under construction between the property of the California Oil Fields, Limited, near Coalinga, in Fresno County, and Martinez, on San Francisco Bay, in Contra Costa County, California, in accordance with the plans and specifications filed with this Commission in connection with the application herein, to which reference is hereby made.

3. The Valley Pipe Line Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock hereby authorized to be issued, and on or before the twenty-fifth day of each month the applicant shall make verified report to the Commission, stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

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The foregoing sixth supplemental order is hereby approved and ordered filed as the sixth supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of October, 1915.

DECISION No. 2845.

IN THE MATTER OF THE APPLICATION OF SPRING VALLEY WATER COMPANY FOR AUTHORITY TO ISSUE PROMISSORY NOTES AND TO PLEDGE BONDS TO SECURE THE SAME AND FOR AUTHORITY TO ISSUE COLLATERAL TRUST GOLD NOTES; TO EXECUTE A COLLATERAL TRUST AGREEMENT AND TO PLEDGE BONDS THEREUNDER TO SECURE SAID NOTES.

Application No. 1820.

Decided October 27, 1915.

Applicant was heretofore authorized to issue $2,500,000.00 collateral trust notes, the proceeds of which were to be used for additions and betterments to its system, and now finding itself with a balance of $117,582.22 of this amount on hand, it applies for permission to use this balance as working capital, pending the necessity of spending it for capital purposes. Application granted.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

FIRST SUPPLEMENTAL ORDER.

Whereas, this Commission in its Decision No. 2690, dated August 12, 1915, authorized Spring Valley Water Company to issue $2,500,000.00 of two year 5 per cent collateral trust notes dated September 1, 1915, secured by a trust agreement in favor of Union Trust Company of San Francisco by which $3,334,000.00 of general mortgage bonds were pledged as collateral security for said notes; and

Whereas, the above mentioned order further provided that the proceeds from the sale of said notes were to be used for the following purposes, to wit:

The refunding, redemption or discharge of certain outstanding promissory notes;

The reimbursing of the company's treasury for capital expenditures made between October, 1913, and July 1, 1915; and the balance for future capital expenditures; and

Whereas, Spring Valley Water Company now reports to this Commission that under the authority heretofore granted it has expended for the above purposes the total sum of $2,332,417.78, leaving in its treasury an unexpended balance of $117,582.22, which sum it states

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is not immediately needed for permanent improvements and which it therefore desires to use temporarily as working capital pending its permanent investment as specified by the previous order of the Commission, dated August 12, 1915, and it appearing to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that Spring Valley Water Company be and it is hereby authorized to use the sum of $117,582.22 now remaining in its treasury from the sale of $2,500,000.00 of its collateral trust notes as working capital, pending its permanent investment as specified by this Commission's order dated August 12, 1915, in the above entitled matter.

The order herein made is granted upon the following conditions and not otherwise:

(1) On or before December 31, 1916, unless otherwise authorized by this Commission, applicant shall convert said working capital into fixed capital in the form of additions and betterments to its properties to cost not less than $117,582.22; said additions and betterments to consist of additions and betterments as heretofore authorized in this Commission's Decision No. 2690.

(2) Except as modified by the order herein, this Commission's Decision No. 2690, dated August 12, 1915, shall remain in full force and effect.

Dated at San Francisco, California, this 27th day of October, 1915.

DECISION No. 2846.

IN THE MATTER OF THE APPLICATION OF LOS ANGELES GAS AND ELECTRIC CORPORATION FOR THE ESTABLISHMENT OF A SPECIAL RATE FOR ELECTRIC CURRENT FOR POWER PURPOSES TO A CERTAIN CLASS OF CONSUMERS.

Application No. 1881.

Decided October 27, 1915.

REPORT OF THE COMMISSION.

The above entitled application of the Los Angeles Gas and Electric Corporation having been made for the establishment of a special option schedule of rates for agricultural service and it appearing from a preliminary investigation that, as the proposed rates are optional and result in a reduction, no formal action is required in order that they become effective as outlined in section 15, of the Public Utilities Act, and informal authorization having been granted,

It is hereby ordered that the above entitled application be and the same is hereby dismissed.

Dated at San Francisco, California, this 27th day of October, 1915.

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DECISION NO. 2847.

IN THE MATTER OF THE APPLICATION OF UNION HOME TELEPHONE AND TELEGRAPH CORPORATION FOR AN ORDER AUTHORIZING SAID CORPORATION TO ISSUE NOTES FOR INTEREST ON COUPON DEBENTURES FALLING DUE NOVEMBER 1, 1915.

Application No. 1899.

Decided October 27, 1915.

Applicant, having debenture bonds outstanding, the holders of which have agreed to an extension of the date of maturity provided applicant shall issue its notes covering the interest thereon, applies for permission to issue $24,000.00 face value of notes for different periods covering the interest on such bonds for two years, agreeing that such notes shall not be chargeable to capital account and shall be payable from income, and it appearing that certain of the debentures are either held in applicant's treasury or pledged as collateral, it is authorized to issue $21,900.00 face value of notes for the purposes specified.

W. W. Butler, for Applicant.

REPORT OF THE COMMISSION.

Union Home Telephone and Telegraph Corporation, of Los Angeles County, seeks authority from the Railroad Commission to issue notes aggregating $24,000.00, maturing in six, twelve, eighteen and twenty-four months after November 1, 1915, representing the interest to become due at those periods upon its issue of 400 six-year 6 per cent debenture bonds of the par value of $500.00 each, aggregating $200,000.00, which will mature November 1, 1915, 365 of which, aggregating $182,500.00 par value, have heretofore been sold and delivered to the present holders. The issue is secured by 500 of the company's first mortgage 5 per cent bonds of the par value of $1,000.00 each, aggregating $500,000.00.

Of the $17,500.00 of said debenture bonds not sold and delivered, 20 of said debenture bonds, aggregating the par value of $10,000.00, are pledged to secure the payment of four certain promissory notes made by applicant. The remaining 15 of the said debenture bonds of the aggregate par value of $7,500.00 remain in the treasury of applicant not sold or pledged.

There are about fifteen holders of said debentures, principally banks, all but two of whom, holding $15,000.00 in par value thereof, have consented to extend the time of maturity of said debentures for an additional period of two years, and have signed an agreement to that effect, and provided therein the form of the proposed notes. The obligation to pay interest upon the debentures after their maturity

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already exists by their terms. The issue of said notes will not increase the indebtedness of the corporation. Applicant expresses willingness to have the granting of this application made conditional upon all debenture holders agreeing upon said extension.

In addition to asking for authority to issue notes covering interest upon the $182,500.00 of bonds outstanding, applicant has asked permission to issue notes covering interest upon the $10,000.00 of bonds held as collateral and the $7,500.00 of bonds held in its treasury. The necessity for issuing notes covering interest charges upon these latter bonds is not apparent and this portion of the company's application will accordingly be denied.

ORDER.

Union Home Telephone and Telegraph Corporation having applied to the Railroad Commission for an order authorizing the issue of its promissory notes aggregating $24,000.00 in amount, being interest for two years at 6 per cent upon its issue of $200,000.00 par value of 6 per cent six-year debenture bonds, pursuant to agreement with most of its debenture holders, by which the maturity of said debentures is to be extended two years until November 1, 1917; and a public hearing having been held upon said application and the Commission finding that applicant's request is reasonable and should be granted to the extent hereinafter set forth, and that the purposes for which applicant desires to issue said notes are chargeable to income, in that they represent interest hereafter to be paid upon applicant's debentures, and it appearing that said notes will not be capitalized, but will be paid out of applicant's income,

It is hereby ordered by the Railroad Commission of the State of California that Union Home Telephone and Telegraph Corporation be, and the same is hereby, authorized to issue its promissory notes in the total sum of $21,900.00; $5,475.00 thereof payable May 1, 1916; $5,475.00 thereof payable November 1, 1916; $5,475.00 thereof payable May 1, 1917; and $5,475.00 thereof payable November 1, 1917, being for interest to accrue on its said debenture bonds.

The authority hereby given is subject to the following conditions:

1. Said notes shall be issued only to evidence or represent interest to become due at the above dates upon applicant's said debentures.

2. In the event of payment before November 1, 1917, of any or all of said debentures, any of said notes evidencing or representing unearned interest to become due thereon after the payment of any of said debentures shall be promptly surrendered to applicant and by it canceled at the time of the payment of said debentures and the interest earned thereon.

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3. The authority hereby given to issue promissory notes shall apply only to such promissory notes as may be issued prior to February 1, 1916.

4. Applicant shall report to the Railroad Commission within ten days after the issue of any note hereby authorized to be issued, the fact of the issue of said note or notes and the terms and conditions thereof.

5. Before issuing any of said notes, applicant shall secure the written agreement of all holders of its debentures, to extend the time of maturity of said debentures until November 1, 1917.

6. The authority herein given to issue promissory notes shall not become effective until Union Home Telephone and Telegraph Corporation has paid the fee specified in section 57 as amended of the Public Utilities Act.

Dated at San Francisco, California, this 27th day of October, 1915.

DECISION No. 2848.

UNITED RAILROADS OF SAN FRANCISCO

vs.

PENINSULA RAPID TRANSIT COMPANY.

Case No. 835.

Decided October 29, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

United Railroads of San Francisco have filed a petition for rehearing herein. The petition presents no new matter other than a reference to the decision of the Public Service Commission of West Virginia, rendered on August 19, 1915, in *Smith* vs. *Nunnelly* (P. U. R. 1915 E., p. 177). From this case it appears that the statutes of West Virginia have conferred upon the Public Service Commission jurisdiction over all common carriers without anything in the statute to limit in any way the ordinary meaning of the term "common carrier." As indicated in our opinion herein, such a case can have no applicability to the question in this State, in which the Public Utilities Act defines the term "common carrier" in such a way as not to include auto busses.

After careful consideration, no good reason occurs to us for altering the conclusion heretofore reached herein.

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ORDER.

United Railroads of San Francisco having filed a petition for rehearing and careful consideration having been given to said petition and no good reason appearing why said petition should be granted,

It is hereby ordered that said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION No. 2849.

IN THE MATTER OF THE INVESTIGATION OF THE RAILROAD COMMISSION UPON ITS OWN INITIATIVE INTO THE FINANCIAL CONDITION OF UNITED RAILROADS OF SAN FRANCISCO.

Case No. 610.

Decided October 29, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

This Commission in its first supplemental order in the above entitled matter dated August 24, 1915 (Decision 2710), having directed United Railroads of San Francisco to establish a depreciation account amounting to $550,000.00 per annum until June 30, 1918, or until the further order of the Commission, and said order having further provided that of the money so accumulated, $25,000.00 per month or $300,000.00 annually, should be used and expended only for the construction of additional facilities or extensions and for the fulfilling of franchise obligations or for the improvement of service or for such other services properly chargeable to a depreciation account as may be authorized by this Commission, and said order having further provided that said sum of $25,000.00 per month, or any part thereof, should only be expended after the company had submitted a statement to this Commission setting forth the purposes for which it proposed to make expenditures and had received the Commission's authorization approving the same, and applicant now having presented to this Commission an estimate of expenditures for additions and betterments for the period beginning July 1st and ending December 31, 1915, amounting to $139,193.00, which expenditures it desires to charge against the above mentioned depreciation fund of $25,000.00 a month, and it appearing

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to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that United Railroads of San Francisco be and it is hereby authorized to charge against the depreciation fund of $25,000.00 per month, which it was directed to accumulate under this Commission's Decision No. 2710, the expenditures for additions and betterments for the period beginning July 1, 1915, and ending December 31, 1915, which are more fully set forth in its Exhibit "A," filed with this Commission on September 29, 1915.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION No. 2850.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY FOR AUTHORITY TO INCREASE CERTAIN CARLOAD RATES ON GRAIN AND ARTICLES TAKING GRAIN RATES, SHOWN IN ITS LOCAL AND JOINT TARIFF NO. 8243-A C.R.C. NO. 302, BETWEEN LOS ANGELES AND YSIDORA TO FALLBROOK, INCLUSIVE, BETWEEN ESCONDIDO AND FALLBROOK AND LOS ANGELES, HOBART TO ORANGE, INCLUSIVE, SANTA ANA TO SERRA, INCLUSIVE, MATEO TO STUART, INCLUSIVE.

Application No. 1749.

Decided October 29, 1915.

The Atchison, Topeka and Santa Fe Railway Company applies for permission to increase carload rates on grain and articles taking grain rates between Fallbrook, Escondido, Los Angeles and intermediate points from 10 cents per 100 pounds to 11 cents between certain points and 12½ cents between others, and it appearing that the present rates were voluntarily established by applicant and have been in effect for a considerable length of time, and no good cause appearing why changes should be made at this time, application denied without prejudice.

E. W. Camp, for Applicant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

The Atchison, Topeka and Santa Fe Railway Company is seeking authority to increase certain carload rates on grain and articles taking grain rates, shown in its Local and Joint Tariff No. 8243-A, C.R.C. No. 302, effective October 26, 1914. The points between which the increases are sought, also the present and proposed rates and the pages

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of tariff on which the present rates appear are shown in the following table:

Page	Between— (head line points)	And— (side line points)	Rates in cents per 100 pounds	
			Present	Proposed
18	Fallbrook. Escondido.	Los Angeles, Index No. 437.	10	12½
		Hobart, Index No. 451, to Los Nietos, Index No. 456, inclusive.		
19		Santa Fe, Index No. 457, to Orange, Index No. 462, inclusive.		
20		Santa Ana, Index No. 509, to Serra, Index No. 516, inclusive.		
		Mateo, Index No. 517, to Stuart, Index No. 522, inclusive.		11
21	Los Angeles.	Ysidora, Index No. 523, to Fallbrook, Index No. 528, inclusive.		12½
		Falda, Index No. 530, to Escondido, Index No. 534, inclusive.		

Ysidora to Fallbrook, Index Nos. 523 to 528, inclusive, Falda to Escondido, Index Nos. 530 to 534, inclusive, are branch line points and hereinafter will be referred to as the branches.

The original rates between Los Angeles and points indicated were shown in applicant's tariff No. 8243, C.R.C. 28, effective May 20, 1907; those between Fallbrook, Escondido and other points enumerated were not specifically stated, but were held down by the rate to or from Los Angeles.

On May 20, 1913, carrier filed its Local Tariff C.R.C. No. C L 98, in which is shown a rate between San Diego and Los Angeles of $2.00 per ton, carloads, on grain and other specified commodities taking the grain rates. This tariff is governed by the rules and regulations contained in C.R.C. No. 28 and canceled the rate of $2.50 per ton between the points shown. One of the rules and regulations in the latter publication, Item 50–A, effective July 31, 1907, reads:

> "Under application of this tariff stations Ysidora to Fallbrook, Cal. (Index Nos. 386 to 389, inclusive), and stations Falda to Escondido, Cal. (Index Nos. 392 to 397, inclusive), will be considered as intermediate points on line San Diego to Barstow, Cal., via either Riverside or Los Angeles, Cal."

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On July 15, 1913, Local Tariff C.R.C. No. C L 98 was canceled; thereafter the rate of $2.00 per ton between San Diego and Los Angeles was carried in Items Nos. 240 and 241, Supplement No. 24 to C.R.C. No. 28. It appears that carrier's agents and auditing department, from this date, held the San Diego-Los Angeles rate of $2.00 per ton as the maxima between the branch line points and Los Angeles and other points intermediate. On December 17, 1913, application was made to this Commission under section 63 of the Public Utilities Act for permission to amend Items 240 and 241 so as to prevent this rate applying on traffic between such points. More or less correspondence passed between the applicant and the Commission, but before the matter could be informally determined Tariff No. 8243, C.R.C. No. 28, was canceled by Tariff No. 8243–A, C.R.C. No. 302, in which the present rates were specifically shown. A new schedule having become effective subsequent to the filing of the original application the Commission requested carrier to file a new application, which was done on June 18, 1915. This application was set for a hearing at Los Angeles, 10.00 a.m., August 11, 1915, and notice of the hearing sent to commercial organizations and grain merchants at San Diego, Escondido, Santa Ana and Los Angeles, inviting them to be present, but notwithstanding the notifications no one appeared at the hearing in opposition to the proposed changes.

In justification of the increases applicant's witness testified that:

> "At the time rate of 10 cents per 100 pounds was published between San Diego and Los Angeles it was not the intention that rate was to apply at points on the Fallbrook and Escondido branches, which was authorized in Rule 50–A, * * * and that through clerical error the rates in Items 240 and 241 * * * were not flagged."

Applicant also contends that Item 50–A did not authorize the application of the San Diego-Los Angeles rate of $2.00 per ton on traffic moving between the branches and Los Angeles or between points intermediate, further contending that these branches were to be considered intermediate to San Diego only on shipments destined to or received from points beyond Los Angeles or Riverside to Barstow, inclusive.

While it may be admitted that Item 50–A is not clear as to its meaning and should have been more specific, I am constrained to give the shipping public the benefit of the doubt when a rule or regulation is susceptible of a dual interpretation, for it is axiomatic that tariffs should be certain and definite and not ambiguous.

It is also contended that the rates between the branches and Los Angeles and intermediate points should be higher than the rates between San Diego and Los Angeles, due to branch line service being more expensive. To this I would agree were it not for the fact that

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during the period May 20, 1907, to May 22, 1913, slightly over seven years, the rates on grain and articles taking grain rates were the same between San Diego and Los Angeles as between the branches and Los Angeles, viz, $2.50 per ton. This to my mind indicates that the rates between the branches and Los Angeles were to be no higher than the rates between San Diego and Los Angeles, and it seems inconsistent for applicant to ask that this recognized feature be disturbed simply because the San Diego-Los Angeles rate was reduced to $2.00 per ton. This deduction convinces me that when the San Diego-Los Angeles rate was reduced the reduction was intended to apply between the points herein considered.

It was testified that the rate of $2.00 per ton between San Diego and Los Angeles was published to meet water competition, and applicant's witness urges this in further support of its contention that a clerical error had been made in not qualifying Items Nos. 240 and 241 so as to restrict the application and prevent its use between Los Angeles and the branches. If this is true the proper procedure would have been for carrier to come before this Commission and request permission under section 24 of the Public Utilities Act to maintain higher rates between intermediate points than between San Diego and Los Angeles; this procedure, if favorably acted upon, would have excluded the branches from enjoying the benefit of the San Diego-Los Angeles rate.

From the following study it will be seen that the revenue per ton mile under the rate herein considered is materially greater between the branches and points indicated than between San Diego and Los Angeles.

Miles	Between—	And—	Rate per ton	Revenue per ton mile (in cents)
127	San Diego	Los Angeles		01.575
101	Fallbrook	Los Angeles		01.98
89		Los Nietos		02.247
69		Orange		02.899
42		Serra		04.762
21		Stuart	$2 00	09.524
107	Escondido	Los Angeles		01.869
95		Los Nietos		02.105
75		Orange		02.667
48		Serra		04.167
27		Stuart		07.407

The evidence in this record is not sufficient to enable me to pass upon the reasonableness and propriety of the proposed adjustment, disturbing a rate situation between communities which has existed for many years. In order at this time to justify a radical change in the

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rates, good and sufficient reasons therefor must be shown. I find that such reasons have not been given and accordingly recommend that this application be denied without prejudice.

I submit herewith the following form of order:

ORDER.

The Atchison, Topeka and Santa Fe Railway Company having applied to this Commission for permission to increase certain carload rates on grain and articles taking grain rates between points on the Fallbrook and Escondido branches and other points shown in the opinion which precedes this order, and a public hearing having been held, and the Commission being fully apprised in the premises, and being of the opinion that the application should be denied,

It is hereby ordered that The Atchison, Topeka and Santa Fe Railway Company be denied, without prejudice, permission to raise the rates as requested in the application in this proceeding.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION No. 2851.

IN THE MATTER OF THE APPLICATION OF HOME TELEPHONE COMPANY OF COVINA FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS AND THE EXECUTION OF A MORTGAGE OR DEED OF TRUST TO SECURE THE SAME.

Application No. 637.

Decided October 29, 1915.

Applicant was heretofore authorized to issue $40,000.00 face value of its bonds and the minimum amount at which such bonds could be sold was fixed at 95. It now finds that it is unable to sell the bonds at this price and applies for and is granted permission to sell such bonds at 90, and the time limit of the original authorized extended to August 1, 1916.

REPORT OF THE COMMISSION.

THIELEN, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

In an order dated August 21, 1913 (Decision No. 896), this Commission authorized Home Telephone Company of Covina to issue $87,700.00 of its 6 per cent bonds maturing January, 1943. The order

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provided for the issuance of $40,000.00 of these bonds to be sold at not less than 95 per cent of face value and accrued interest, the proceeds to be used for additions and betterments and for refunding certain promissory notes held by the First National Bank of Covina.

The order further provided that the remaining $47,700.00 bonds might be exchanged, bond for bond, for an equivalent number of bonds of the company's first authorization on condition that this authority should not become effective until the company should have disposed of the $40,000.00 of bonds above mentioned.

Applicant now reports to this Commission that it has been able to dispose of only $4,500.00 of these bonds, and it accordingly asks for authority to sell the remainder at 90 instead of 95.

The original order made by this Commission on August 21, 1913, applied only to bonds issued on or before August 1, 1914. By an order extending time, dated July 14, 1914, this authority was extended to August 1, 1915. Applicant now requests that it be again extended to and including August 1, 1916.

After consideration of the evidence submitted by applicant, I am of the opinion that its petition should be granted and I accordingly recommend the following form of order:

FIRST SUPPLEMENTAL ORDER.

Home Telephone Company of Covina having applied to this Commission for authority to sell certain of the bonds authorized by this Commission in its order dated August 21, 1913, at not less than 90 per cent of their face value and accrued interest, and having further asked for an extension of time within which to sell all of the bonds authorized by the above mentioned order, and it appearing to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that Home Telephone Company of Covina be and it is hereby authorized to sell at a price to net not less than 90 per cent of their face value and accrued interest, the unsold portion of the $40,000.00 of bonds heretofore authorized by this Commission in its Decision No. 896 for the purpose of providing applicant with funds with which to make additions and betterments to its properties and to refund certain notes.

It is hereby further ordered that the time within which Home Telephone Company of Covina may issue all of the bonds authorized by the above mentioned decision be and it is hereby extended to and including the first day of August, 1916.

It is hereby further ordered that this Commission's Decision No. 896, dated August 21, 1913, and such orders as have been issued supplemental thereto, shall remain in full force and effect except as modified by this first supplemental order.

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The foregoing first supplemental opinion and first supplemental order are hereby approved and ordered filed as the first supplemental opinion and first supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION No. 2852.

IN THE MATTER OF THE APPLICATION OF CITY OF CALEXICO FOR PERMISSION TO CONSTRUCT A CROSSING AT GRADE OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY AT FIFTH STREET, IN THE CITY OF CALEXICO, IMPERIAL COUNTY, CALIFORNIA.

Application No. 1889.

Decided October 29, 1915.

City of Calexico applies for permission to extend Fifth street across the tracks of Southern Pacific Company, which company objects to such crossing contending that it will be in the center of a busy switching yard and add considerable to the dangers of operation. An investigation showing that at present there is no other available crossing in the vicinity of the one proposed and that teams are obliged to make considerable detours to reach points on the opposite side of the tracks, also the natural growth of the city requiring this additional crossing, application granted.

Walter H. Sprague and *Leslie Reed*, for Applicant

George D. Squires, for Southern Pacific Railway.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed with the Commission on September 27, 1915, and a public hearing was held at Calexico on October 19, 1915.

As the caption states the application looks to the opening of Fifth street across the tracks of Southern Pacific Company. At the proposed point of crossing the tracks are six in number, consisting of one main line track and five tracks used as sidings, drill tracks and industrial spurs. In addition to these tracks there is a crossover located partly within the limits of the proposed crossing with one of its switches about in the center of the proposed street extension.

The tracks of Southern Pacific Company traverse the city of Calexico in a north and south direction. The residence and business sections of the city and the original industrial district are to the east of the tracks. The territory to the west of the tracks, between the tracks and

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New River, has been set aside as the future industrial district of Calexico, and some industries are already located there, immediately across the tracks from the principal industries on the east side. There are at present two crossings over the tracks within the city. The southerly crossing at Second street crosses five tracks near the engine house of the railroad company. The other crossing, at Grant street, is 2,800 feet north of Second street and crosses four tracks. Fifth street is about 1,200 feet north of Second street and is thus approximately half way between the two crossings now open. West of the track it joins a north and south highway called River road.

It is the contention of the city that the open crossings which now give access from one side of the tracks to the other are neither sufficient nor properly located to serve the business of the town; that the industrial district of the city is cut in two by the tracks and that the convenience of those who use the streets and the proper development of the city depends upon the opening of this proposed crossing. As factors of less importance it is claimed that the opening of Fifth street will take considerable heavy teaming from the main streets of the city which are shortly to be paved, and will take much traffic from the Second street crossing, where several engines are at all times under steam at the engine house and where it is consequently difficult to cross with teams.

The Southern Pacific Company opposes the granting of this application on the grounds that public convenience and necessity do not require the opening of the crossing involved, and that it is located in the center of a busy switching yard, which would make operation difficult and dangerous.

I am of the opinion that the city has proved the need of another crossing nearer the center of the city than the two now in existence. The territory immediately north and south of the proposed crossing on the west side of the track is not accessible by a legal highway from Grant street and although a private road now extends from West Railroad boulevard, which connects with that street, southward across the right of way of the Southern Pacific Company, and three tracks upon it, and across the lands of the Imperial Valley Oil and Cotton Company to Fifth street on the west of the tracks, this road is open only on sufferance and can be closed at any time either by the railway or the cotton company. If this road were a legal highway, to reach this industrial district it would still be necessary for traffic from the northeast to cross the tracks at Grant street and cross the three spur tracks on what is now the private road as well as a spur track on West Railroad boulevard, which parallels the track for a short distance south from Grant street. With this situation in mind it will be seen that

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there is no means of providing for traffic from the northeast part of the city and the country northeast of the city, to this industrial district by any desirable route.

I believe, however, there should be a road leading from this proposed crossing westward to the city limits, or some point near the river, and thence north to join the county road. As the crossing is now proposed there will be no legal connection to the north with Fifth street west of the tracks. This will make it necessary for traffic coming from the country north of Fifth street and west of the track, to cross the railroad twice in reaching the industrial district between the tracks and the river; once at Grant street or further north, and once at Fifth street. This is plainly an undesirable situation and since it can be remedied by the construction of a road from the junction of Fifth street and River road west toward the river and thence north, I am inclined to believe that the granting of this application should be made contingent upon the construction of such a road.

I have discussed the desirability of this crossing for the use of traffic coming from the north and east. The need of the crossing for traffic coming from the south and west is undoubtedly considerable. Much of this territory is devoted to cotton growing and the industries on both sides of the track are mainly connected with that business. Because there is no direct road from one side of the tracks to the other, a rancher having business with the industrial plants on both sides of the track must make a detour of 2,400 feet when possibly the points he desires to reach are less than 500 feet apart across the tracks. Similarly those who deliver cotton to the plants on the west side of the track must drive back to Second street and thence north to reach the business section of the town when, with this crossing open, the business section could be reached almost on a direct homeward route.

Many other matters might be mentioned in which the opening of this crossing would serve public convenience, but it seems unnecessary to dwell upon them, although it is necessary to consider the matter from the viewpoint of the Southern Pacific Company.

There is no question but that a crossing in a railroad yard is undesirable and that the Calexico yard is a comparatively busy one. However, the six regular trains which run over the main line all start from or stop at the station, which is about 600 feet south of the proposed crossing and the speed at Fifth street will necessarily be slow. Except for these trains and possibly an occasional extra freight train, all movements over the crossing are made by one switch engine which is only part of the time at work.

Undoubtedly the opening of this street will cause the railroad company a certain amount of hardship in the arrangement of its trans-

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portation facilities to amply serve the growing city, but it seems to me unreasonable to expect that the development of a city should be made secondary to the development of its railroad facilities, or that those facilities should be developed at the expense of the convenience of those who patronize the industries which use them. It is apparent that such a situation would exist in the present instance. The city must bear all the inconvenience so the railroad company may efficiently operate its plant and provide for the future, or the railroad company must put up with some inconvenience in order that the city may more conveniently lay out its streets and regulate its traffic.

If this crossing were to be operated with the tracks as they are today some protection would undoubtedly be needed, and it is entirely possible that it will be needed in any event. Since, however, the necessity for protection depends upon the method of operation which, in turn, depends upon the track layout and the location of the switches, it is impossible to determine at this time whether protection is needed and, if so, of what it should consist, and I believe the Commission should reserve the right to order at any time such protection as it may deem necessary, and to apportion the expense of such protection, and other incidental expenses, between the railroad and the city on a basis which may to it appear to be equitable.

I recommend the following form of order:

ORDER.

City of Calexico, having applied to the Commission for permission to construct Fifth street at grade across the tracks of Southern Pacific Company, in the city of Calexico, Imperial County, California, and a hearing having been held, and it appearing that this application should be granted, subject to certain conditions to be hereinafter specified,

It is hereby ordered that permission be and the same hereby is granted the city of Calexico, Imperial County, California, to construct Fifth street at grade across the tracks of Southern Pacific Company, subject to the following conditions, and not otherwise, viz:

(1) The crossing shall be constructed of a width of eighty (80) feet, with grades of approach not exceeding three (3) per cent, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(2) The entire expense of constructing the crossing shall be borne by applicant.

(3) The expense of maintaining the crossing thereafter up to within two (2) feet of the rails of Southern Pacific Company shall be borne by applicant. The expense of maintaining the crossing between the rails and to two (2) feet outside thereof shall be borne by Southern Pacific Company.

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(4) Before this crossing shall be constructed applicant shall construct, or cause to be constructed, a public road with a width of not less than 60 feet, running westerly from the west right of way line of Southern Pacific Company at Fifth street, to or near the west city limits of the city of Calexico, and thence northerly to connect with the county road.

(5) The Commission reserves the right to order such protection for this crossing as it may deem necessary, the cost of such protection and such other incidental expense as may have been incurred to be diveded between the city of Calexico and Southern Pacific Company by the Commission.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of October, 1915.

Decisions Nos. 2853, 2854 and 2855, grade crossings; not printed. See end of volume.

DECISION No. 2856.

IN THE MATTER OF THE APPLICATION OF SANTA BARBARA GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING IT TO ISSUE TO THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS ITS BONDS BEARING INTEREST AT THE RATE OF SIX PER CENT PER ANNUM.

Application No. 1525.

Decided October 29, 1915.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL ORDER.

Whereas, this Commission by an order dated February 27, 1915 (Decision No. 2182), authorized Santa Barbara Gas and Electric Company to issue and sell $100,000.00 face value of its first mortgage 6 per cent thirty-year gold bonds; and

Whereas, said order dated February 27, 1915, provides that bonds to the face value of $62,000.00 shall be issued and sold only after

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applicant has obtained a supplemental order specifically authorizing the use of the proceeds to be obtained from the sale of said bonds; and

Whereas, this Commission has heretofore by supplemental orders authorized applicant to issue and sell bonds to the amount of $49,000.00; and

Whereas, Santa Barbara Gas and Electric Company has now filed a supplemental application for an order authorizing it to issue and sell $13,000.00 face value of first mortgage 6 per cent thirty-year gold bonds for the purpose of partially reimbursing its treasury for moneys actually expended therefrom in payment for additions and betterments to its plant and system as set forth in "Exhibit A" attached to its supplemental application dated October 21, 1915; and

Whereas, it appears that the purposes for which applicant desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Santa Barbara Gas and Electric Company be and it is hereby given authority to issue $13,000.00 face value of its first mortgage 6 per cent thirty-year gold bonds, said bonds bearing numbers 1177-1184, both inclusive, and being secured by a trust indenture dated July 1, 1911, and executed to Los Angeles Trust and Savings Bank.

It is hereby further ordered that the provisions of the Commission's order dated February 27, 1915 (Decision No. 2182), and the amendments thereto, shall remain in full force and effect except as modified and amended by this fifth supplemental order.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION NO. 2857.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided October 29, 1915.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL ORDER.

Whereas, this Commission by a supplemental decision (No. 2726), dated August 31, 1915, authorized Western States Gas and Electric

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Company in the above entitled matter to issue $226,000.00 face value of bonds, provided $182,000.00 face value of said bonds be delivered to the company upon its depositing with the trustee in cash the face value of all bonds so delivered, which said deposit may be withdrawn by the company from time to time as reports showing the making of extensions, additions and betterments to its property are filed with and approved by the Railroad Commission of the State of California; and

Whereas, applicant on October 28, 1915, filed a statement showing that it has expended from May 31, 1915, to September 30, 1915, inclusive, for extensions, additions and betterments, the sum of $86,947.64; and

Whereas, applicant asks for authority to withdraw from the aforesaid fund on deposit with the trustee the sum of $86,947.64,

It is hereby ordered that Western States Gas and Electric Company be given and hereby is given authority to withdraw from Girard Trust Company, trustee, the sum of $86,947.64, said $86,947.64 being a portion of the fund deposited with the trustee in accordance with Decision No. 2726, dated August 31, 1915, of the Railroad Commission of the State of California.

It is hereby further ordered that Decision No. 2550, dated June 30, 1915, as amended by Decisions Nos. 2697 and 2726, remain in full force and effect except as in conflict with this fifth supplemental order.

Dated at San Francisco, California, this 29th day of October, 1915.

DECISION No. 2858.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORITY TO REMOVE AND ABANDON A SPUR TRACK, BETWEEN FOURTH AND FIFTH STREETS, IN THE CITY OF SAWTELLE, COUNTY OF LOS ANGELES.

Application No. 1919.

Decided October 30, 1915.

REPORT OF THE COMMISSION.

This is an application, filed October 19, 1915, on the part of the Pacific Electric Railway Company for authority to remove and abandon a certain spur track in the city of Sawtelle, Los Angeles County. It appears that the spur track for which authority is sought for removal and abandonment has heretofore been maintained extend-

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ing from the northerly track of the applicant on Santa Monica boulevard northerly into the block bounded by Fourth street, Fifth street, Santa Monica boulevard and Indiana avenue, where the freight station of the applicant was located serving the city of Sawtelle.

It appears that due to the extreme curvature of the spur track it was impossible to operate freight trains into the freight station without violating the provisions of the Federal Safety Appliance Act as approved by the Congress of the United States, and that the freight station has been moved from the above mentioned location to a new and satisfactory location near the Southern Pacific Company crossing in said city of Sawtelle, and that by reason of such removal and relocation of the said freight station and the further fact that the said city of Sawtelle is about to commence the improvement of Santa Monica boulevard by the installation of a modern pavement, the public necessity and convenience do not require the further use and maintenance of the spur track, and a considerable expense would be placed upon the applicant were the track to be rebuilt at the time the paving of Santa Monica boulevard is undertaken by the said city of Sawtelle.

This application is made under the provisions of General Order No. 36 of this Commission which requires that no siding or spur track upon which passengers have been received or discharged shall be taken up unless application shall have been made and the consent of this Commission secured.

ORDER.

It appearing to the Commission that this is not a case in which a public hearing is necessary; that the continued maintenance of the spur track running from the northerly track of the applicant on Santa Monica boulevard into the block bounded by Fourth street, Fifth street, Santa Monica boulevard and Indiana avenue in the city of Sawtelle, county of Los Angeles, is not necessary for the convenience of the shippers and receivers of freight using the lines of the applicant as other proper and adequate facilities have been provided,

It is hereby ordered that said application be and the same is hereby granted.

Dated at San Francisco, California, this 30th day of October, 1915.

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DECISION No. 2859.

IN THE MATTER OF THE APPLICATION OF THE KERMAN TELEPHONE COMPANY FOR PERMISSION TO ISSUE ONE SHARE OF STOCK.

Application No. 1808.

Decided October 30, 1915.

Kerman Telephone Company authorized to issue one share of stock of the par value of $35.00, such share to be issued to R. L. Furlong in lieu of a share heretofore issued to him without proper authorization, proceeds of which were used for additions to plant.

REPORT OF THE COMMISSION.

This is an application of Kerman Telephone Company for authority to issue one share of stock of the par value of $35.00 to R. L. Furlong, in place of a similar share issued on May 11, 1914, without authority from this Commission. There is no evidence to show that applicant's violation of the terms of the Public Utilities Act was intentional, and as the company states that the proceeds from the sale of this stock were used in extending its line, it appears that the application should be granted, subject, however, to the terms of the following order:

ORDER.

Kerman Telephone Company having applied to this Commission for authority to issue one share of stock of the par value of $35.00 to R. L. Furlong, in lieu of a similar share of stock issued on May 11, 1914, to the said R. L. Furlong without authority of this Commission, and a hearing having been held, and it appearing that applicant's request is reasonable and should be granted, and the purposes for which said stock is to be issued are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Kerman Telephone Company be given authority and it is hereby given authority to issue one share of stock to R. L. Furlong.

The authority herein given is granted upon the following conditions, and not otherwise:

1. Said share of stock herein authorized to be issued shall be issued in lieu of a share of stock heretofore issued to R. L. Furlong on May 11, 1914, and shall be issued at not less than its par value of $35.00.

2. Applicant shall report to this Commission within thirty days after the issuance of said stock the fact of the issue thereof.

3. The authority hereby given to issue said stock shall apply only to stock issued by applicant on or before the first day of December, 1915.

Dated at San Francisco, California, this 30th day of October, 1915.

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Decisions Nos. 2860, 2861 and 2862, grade crossings; not printed. See end of volume.

DECISION No. 2863.

HESTER LOOBY ET AL.

vs.

SAN DIEGO CONSOLIDATED GAS AND ELECTRIC COMPANY.

Case No. 815.

Decided October 30, 1915.

Complainants petition the Commission to compel defendant company to serve them with electric energy at the same rates as now in effect in the city of Chula Vista, and an investigation showing that there is no prospect of additional consumers in the district in which the five complainants reside, and the revenue to be derived therefrom would be insufficient to cover cost of service.

Held, Defendant directed to construct the line necessary to serve the complainants herein, provided that complainants sign a guarantee which shall provide that not less than five consumers shall take service and agree to a minimum rate of $2.50 per month, for a period of three years.

W. R. Edwards, for Complainants.

Frederic W. Stearns, for Defendant.

REPORT OF THE COMMISSION.

This action is brought by certain residents of an outlying portion of Chula Vista, California, to compel the defendant, San Diego Consolidated Gas and Electric Company, a corporation, to serve complainants with electricity at rates prevalent in Chula Vista for similar service.

The answer of the defendant corporation alleges that complainants do not live in the territory served or occupied by defendant, that no part of defendant's system of facilities reaches any of the complainants, and that in order to make the extension necessary to serve complainants, or any of them, the expenditure of a sum upon which no adequate return could be had would be necessary.

Upon the issues raised by the pleadings the matter came on regularly for hearing at San Diego, California, on August 27, 1915. The material facts brought out in the evidence are in substance as follows:

Complainants (five in number) are residents of Marlborough Heights, a subdivision of Chula Vista, California, the part of which subdivision occupied by complainants being approximately 2,000 feet distant from the existing line of the electric company. To extend the

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service sought by the complainants would require the expenditure of approximately nine hundred (900) dollars by the defendant corporation. The number of consumers who would be served by the proposed extension are five, and it is admitted by complainants that little or no increase to that number may be anticipated. Complainant Edwards testified that one other consumer was contemplating building, contingent, however, on the proposed extension of electric light service, and that beyond that party he knew of none, nor had any reason to anticipate any building on the line of the proposed extension. He, in fact, stipulated that for the purposes of the case, no buildings other than those existing at present would be constructed, or need be considered.

No testimony was offered bearing upon the question of the general profit with which the defendant company operates in the community.

The income from such an extension would probably be not to exceed $1.50 per month per house, or an aggregate from the extension of ninety (90) dollars per year, or at most one hundred and eight (108) dollars per year if the sixth possible consumer be considered.

The matter was argued by briefs of counsel and submitted, and the question now presented for decision is whether or not complainants are entitled to the relief prayed for, and, if not, upon what condition this Commission will order the extension sought.

The Commission has recently laid down rules covering the question of extensions of public utility service. Rule 15 as laid down in that decision and the authorities upon which it is based are applicable to the present case. The rule is as follows:

> "A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission." In the matter of the practice of water, gas, electric and telephone utilities requiring deposits before rendering service, Case 683, California Railroad Commission, decided August 12, 1915.)

The revenue to be obtained from the five prospective consumers in this case was estimated at ninety (90) dollars per year. The interest, depreciation and maintenance on the local investment of nine hundred (900) dollars will equal approximately twelve per cent, or one hundred

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and eight (108) dollars per year. It follows that the proposed extension, if made, would not pay the local fixed charges. The proposed extension will not, under the testimony, ever be self-supporting.

While it does not follow that each extension ordered by this Commission must be self-supporting, we find on the facts of this case, that if complainants desire service they should be willing to guarantee a revenue in excess of that estimated to be derived from the extension under existing rates.

We have before us a computation prepared by the Commission's engineering department of the estimated cost of the local extension, the probable revenue and other cost to the company incident to the extension, from which it appears that a minimum charge of $2.50 per month would be reasonable to be charged by the company to the consumers served if the desired extension be made.

ORDER.

Complainants having applied to this Commission for an order directing the defendant, San Diego Consolidated Gas and Electric Company, a corporation, to extend its service lines so as to serve complainants with electric current for lighting purposes, and the Commission, after a public hearing in relation thereto, having fully considered the facts from the proofs adduced, and all and singular being advised in the premises; now, therefore,

It is hereby ordered that defendant, San Diego Consolidated Gas and Electric Company, a corporation, extend its service lines and connections in such manner as may be necessary to provide electric current for lighting purposes to the residences of the complainants in Marlborough Heights, Chula Vista, California, subject, however, to the following conditions:

(1) Before such extension be made, as hereinabove ordered, the complainants herein, or other consumers, shall execute in favor of the defendant company a good and sufficient undertaking or guarantee to said defendant company, guaranteeing that at least five consumers will use the electricity for lighting or other purposes, and pay therefor a minimum charge of two and 50/100 (2.50) dollars per month each for a period of three years.

(2) The Commission reserves the right to make such further orders in this proceeding relative to the amount of the above named minimum charge and the manner of guaranteeing the same as it may deem necessary and to further modify this order in such manner as may be advisable in the premises.

Dated at San Francisco, California, this 30th day of October, 1915.

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DECISION NO. 2864.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF QUINCY WESTERN RAILWAY COMPANY.

Case No. 185.

Decided October 30, 1915.

Investigation on the Commission's own initiative to determine the value of the physical properties of the Quincy Western Railway Company.

Findings of Fact: That the original cost of the operative physical property of respondent as of June 30, 1914, is the sum of $79,691.30; that the reproduction cost of the operative physical property of respondent as of June 30, 1914, is the sum of $76,397.53, with the use of multiples in finding land values, $78,026.73; that the present value of the operative physical property of respondent as of June 30, 1914, is the sum of $65,531.05, with the use of multiples, $67,160.25.

R. K. Burrows, for Quincy Western Railway Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This proceeding was brought on the Railroad Commission's own initiative for the purpose of ascertaining the various elements entering into the value of the property of the Quincy Western Railway Company. This property is situated in Plumas County, California. For the general procedure in these valuation cases and for a general description of the work performed by the Commission's engineering department, reference is hereby made to the Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company, and Case No. 210, being the matter of ascertaining the value of the property of the Tonopah and Tidewater Railroad Company.

These valuations were instituted under section 20 of the Stetson-Eshleman Act, effective February 10, 1911, and continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to this proceeding are sections 47 and 70. As is usual in these valuation cases, I shall confine myself to making findings of fact on specified elements bearing on the question of the value of this company's property, as shown by the evidence in this case, and shall not make a finding on the question of the ultimate value of the property, irrespective of the purpose for which the value is ascertained.

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I shall, in connection with this inquiry, consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction cost, as defined.
6. Reproduction cost less depreciation, as defined.

It seems desirable to first define the three elements of value which I propose to find:

> The term "original cost" means the original book cost and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's accounting classifications, in cash or its equivalent in terms of cash, by the public utility for its operative property in the State of California, as of the date of the valuation.
>
> The term "reproduction cost" means the estimated cost in cash of reproducing, in the condition (new or second-hand) in which it was acquired, the physical property of the public utility in the State of California, as of the date of valuation, to which is added the value of all operative lands, based on the market value of adjacent and similar lands, the actual or estimated cost of acquiring franchises and the estimated cost of overhead expenditures for engineering, law, interest and similar items.
>
> The term "reproduction cost less depreciation" is defined as the "reproduction cost" less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, and inadequacy or other causes, this diminution being called "depreciation," and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called "appreciation."

In accordance with this Commission's order dated October 17, 1912, the Quincy Western Railway Company on August 17, 1914, filed an inventory and appraisal of its property, together with a statement of original cost and an estimate of its reproduction cost and reproduction cost less depreciation, as of June 30, 1914. A copy of the company's final summary sheet is attached to this opinion and marked "Exhibit A."

On June 8, 1915, the Commission's engineering department submitted to the Commission its detailed valuation report as of June 30, 1914, a copy of which was furnished to the company. A copy of the final summary sheet of this report is attached hereto and marked "Exhibit B."

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Prior to the hearing in this proceeding the company's engineer took up with the engineering department of this Commission certain objections to its valuation report, and in all cases where quantities were at issue an agreement was reached. On one point, however, the engineering department did not agree with the company, and this difference was presented at the hearing held September 15, 1915, at which time the railway company was represented. This point of contention will hereinafter be considered in detail.

1. *Organization, construction and operation.*

The Quincy Western Railway Company was incorporated October 1, 1909, under the laws of the State of California. Among other rights the company had power to build and operate a standard gauge steam railroad between Hartwell (now known as Marston, a station on the Western Pacific Railway Company's main line) and Quincy, both in Plumas County. In September, 1908, the Quincy and Eastern Railroad Company was organized to build the present road, but due to financial difficulties, was compelled to abandon the project, and about one year thereafter, or in November, 1909, was taken over by the new company. During July, 1910, the road was completed and placed in operation.

The road is a short one and extends from Marston through the Spanish Creek Valley to Quincy, a distance of 5.29 miles main line, with .84 miles of sidings and spurs. In the construction of the line the only heavy grading was encountered the first mile, after which the road drops to the floor of the valley, with a maximum grade of 2.47 per cent. For the balance of the line the land contours were followed as nearly as possible, resulting in a series of curves, which increased the length of the road. The maximum curve used is 10 degrees.

The company operates four trains daily each way between Marston and Quincy. These trains make connections with the regular passenger trains of the Western Pacific Railway, and handle both passenger and freight traffic. At Marston the company has a physical connection with the Western Pacific Railway, but has no traffic agreement with that road covering haul.

2. *Stocks and bonds.*

The company's articles of incorporation authorized the issue of 15,000 shares of capital stock at a par value of $10.00 each, representing a total par value of $150,000.00. According to the company's report for the year ending June 30, 1914, submitted to this Commission, the total capital stock outstanding amounts to the sum of $62,566.00 par value.

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In November, 1909, the Quincy Western Railway Company took over the assets and liabilities of the Quincy and Eastern Railroad Company and authorized an exchange of stock, share for share, crediting stockholders of the latter company for such amounts as had been paid on account of stock subscriptions.

No bonds have been authorized or sold by the Quincy Western Railway Company. There are, however, notes outstanding secured by the property which on June 30, 1914, amounted to the sum of $21,353.08. In December, 1913, the company levied an assessment of $1.00 per share from which it received cash to the amount of $6,288.10. There is no record of any dividends having been paid on the capital stock.

The following is a table showing the financial condition of the Quincy Western Railway Company during the years of 1911, 1912, 1913 and 1914. This information is taken from the company's annual reports to this Commission.

No.	Items	1911	1912	1913	1914
1	Capital stock	$150,000 00	$150,000 00	$150,000 00	$150,000 00
2	Capital stock outstanding	59,378 00	63,831 00	63,881 00	62,566 00
3	Capital stock held in treasury		86,169 00	86,119 00	87,434 00
4	Miscellaneous funded obligations (mortgage)	21,353 08	21,353 08	21,353 08	21,353 08
5	Total outstanding liability	$80,731 08	$93,522 95	$98,529 48	$101,376 67
6	Total outstanding liability per mile	15,261 07	17,679 20	18,625 61	19,163 83
7	Cost of road and equipment	53,546 85	75,424 40	76,384 96	79,316 80
8	Cost of road and equipment per mile	10,122 27	14,257 29	14,439 50	14,993 72
9	Equipment owned, passenger locomotives	1	1	1	1
10	Equipment owned, combination passenger cars	1	1	1	1
11	Equipment owned, flat cars	1	1	1	1

3. *Revenues and expenses.*

Until the year ending June 30, 1914, the largest part of the revenue of this company was derived from passenger traffic during the summer months. The passenger fare is based on the rate of ten cents per mile. The freight revenue from 1911 to 1913, inclusive, averaged about 50 per cent of the passenger revenue. In 1914 the freight receipts showed a large increase and amounted to considerably more than the passenger revenue, which was due to the starting of operation at Quincy by the Quincy Lumber Company.

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The following table presents the more important revenue expenses and traffic statistics for the years ending June 30, 1911, 1912, 1913 and 1914, as shown by the annual reports of this company to the Commission:

No.	Items	1911	1912	1913	1914
1	Mileage main line, miles	5.29	5.29	5.29	5.29
	Operating Revenue.				
2	Freight traffic	$3,272 24	$2,343 78	$3,070 24	$7,018 08
3	Passenger traffic	3,857 67	6,737 40	5,977 24	5,579 92
4	Excess baggage	75 80	59 04	108 98	95 85
5	Mail	63 34	261 11	224 40	245 62
6	Express	99 38	353 10	817 50	961 57
7	Total transportation revenue	$7,368 43	$9,754 43	$10,198 36	$13,901 04
8	Revenue from other than transportation	172 72			230 60
9	Total operating revenue	$7,541 15	$9,754 43	$10,198 36	$14,131 64
10	Total operating revenue per mile	1,425 54	1,843 94	1,927 86	2,671 38
	Operating Expenses.				
11	Maintenance of way and structure	$6,689 65	*	$1,934 90	$2,565 44
12	Maintenance of equipment	1,485 41	*	2,060 26	1,592 78
13	Traffic expense	1,459 70	*		
14	Transportation expense	5,706 13	*	7,601 46	7,486 53
15	General expense	458 00	*	271 61	465 27
16	Total operating expenses	$15,789 89	*	$11,868 23	$12,110 02
17	Total operating expenses per mile	2,986 56	*	2,243 52	2,289 22
18	Ratio expense to revenue	20 95	*	116 37	85 72
19	Net operating revenue	†8,257 74	*	†1,669 87	2,021 62
20	Railway tax accruals	*	*	376 66	515 53
21	Gross income	*	*	†2,046 53	1,506 09
	Deductions from Income.				
22	Hire of equipment	*	*	$389 29	$222 20
23	Miscellaneous rent	*	*		134 46
24	Interest unfunded debt	*	*	1,469 49	1,527 03
25	Total deductions	*	*	$1,858 78	$1,883 69
26	Net income			†3,905 31	377 60
27	Additions and betterments	*	*	960 56	2,738 24
28	Surplus for year	*	*	†3,594 29	†1,539 83
29	Surplus at end of year	*	*	16,117 80	17,657 63

*Not shown in annual reports of company.
†Reduction.

4. *Original cost.*

In the inventory and appraisal filed by the company, reference to which has heretofore been made, the original cost of this road was shown to be the amount of $79,691.30. The items making up this sum were investigated by the Commission's engineering department and

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found to be correct and appear on the final summary sheet attached hereto and marked "Exhibit B"; therefore I am willing to accept the figures of the engineering department, and find as a fact that the original cost, as hereinbefore defined of the operative property of the Quincy Western Railway Company, as of June 30, 1914, is the sum of $79,691.30.

5. *Reproduction cost.*

The company in its valuation report claims the reproduction cost of its property amounts to $83,525.25, as shown by "Exhibit A." The engineering department in its valuation report finds this cost to be the sum of $76,397.53, as shown by "Exhibit B," and being a decrease from that of the company's of $7,127.72. The reason for this difference is explained in detail in the report of the engineering department to the Commission, to which reference is hereby made.

At the hearing the company made but one objection to the reproduction cost as ascertained by the engineering department, this objection being to the multiple applied to the land values. The engineering department determined the present market value of all land, and the value thus found is that shown on the final summary sheet ("Exhibit B"). In its report the engineering department has also shown the market value of land, together with the arbitrary additions, namely, multiple, cost of acquisition and interest, and which in previous cases before this Commission have been included as a part of the findings of fact. In this particular case, the multiple applied by the engineering department was $1.50, to which the company's representative took objection.

Owing to the peculiar conditions arising at the time the right of way was acquired, this company was forced to pay an abnormally high price for lands purchased, and accordingly asked that in determining reproduction cost a multiple of 3 be allowed. It is, of course, impossible to "reproduce" land in the sense that other physical elements of railroad property can be reproduced, and the reproduction cost determined. When it is found that the land of any carrier originally cost more or less than the then market value those facts will, of course, be shown in connection with the findings as to the original cost of the property. Under the heading of "reproduction cost" it is necessary to determine the present value of these railroad lands, and the question arises if this present value should be the same as the present market value of adjoining and similar lands or if a special and higher "railroad value" attaches to lands owned by a common carrier. If the latter alternative is allowed, as constantly insisted upon by railroad companies, the multiple theory is appealed to. I do not in this proceeding consider

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it necessary to either accept or reject this multiple theory, and am satisfied with merely ascertaining the actual facts. The engineering department's report shows the land values for this property both with and without the multiples. I am ready, however, to say now that if a multiple be allowed, it should be determined on the basis of actual present-day average conditions, and I can see no reason whatsoever why in this case present-day land values should be multiplied by 3, simply because at the time of the original purchase of the land the carrier found it necessary to pay so largely in excess of the actual values.

I will also draw attention to the fact that the Supreme Court of the United States definitely denied the right to use multiples and conjectural cost of acquisition and consequential damages when ascertaining the value of railroad lands for rate fixing purposes (Minnesota rate case, 230 U. S. 352, page 455). In the case in question the value of lands, excluding the use of multiples, cost of acquisition and interest, amounts to $2,329.10, as shown by "Exhibit B."

After a careful consideration of the above objection by the company and the evidence in this case on the matter of reproduction cost, I find, therefore, that the reproduction cost, as that term has hereinbefore been defined, of the entire property, if the "market value" of land is used without the addition of multipliers and other arbitrary percentages, of the Quincy Western Railway Company, as of June 30, 1914, is the sum of $76,397.53.

I find, also, that the reproduction cost of this property, including the use of multipliers and other arbitrary percentages, is the sum of $78,026.73.

6. *Reproduction cost less depreciation.*

Reproduction cost less depreciation, as reported by the company and as shown by "Exhibit A," is $81,995.71. This same item, as ascertained by the engineering department in its valuation report to the Commission, is $65,531.05, as shown by "Exhibit B."

The objection made by the company to the insufficiency of multipliers applied in the land account would, if allowed, be reflected in the value shown under this caption. The matter has been discussed in sufficient detail under the previous caption, and I am satisfied to accept the value of land as determined by the engineering department in the column, reproduction cost less depreciation.

I find, therefore, that the reproduction cost less depreciation, as that term has hereinbefore been defined, of the property, if the "market value" of land is used without the addition of multipliers and other arbitrary percentages, of the Quincy Western Railway Company, as of June 30, 1914, is the sum of $65,531.05.

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I find, also, that the reproduction cost less depreciation of this property, including the use of multipliers and other arbitrary percentages, is the sum of $67,160.25.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of October, 1915.

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EXHIBIT "A."

Owning company, Quincy Western Railway Company; operating company, same; from Marston to Quincy. Submitted with report of N. Ware. Dated compiled, July, 1915. Main line track, 5.3 miles; yard tracks, sidings, etc., 0.84 miles; total, 6.14 miles.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
37	--	1	Engineering	$1,327 10	$1,327 70	100	$1,327 70
1	1	2	Right of way and station grounds	5,851 15	6,605 75	100	6,605 75
2	2	3	Real estate				
3	3	4	Grading	11,895 50	11,895 50	100	11,895 50
4	4	5	Tunnels				
5	5	6	Steel bridges and trusses				
6	6	6	Pile and frame truestles	1,754 55	1,754 55	100	1,754 55
7	7	6	Culverts	1,052 68	1,052 68	100	1,052 68
8	8	7	Ties	7,875 55	7,875 55	100	7,875 55
9	9	8	Rails	16,725 64	19,442 11	100	19,442 11
10	10	9	Frogs and switches	564 56	566 50	100	566 50
11	11	10	Track fastenings and other material	2,409 56	2,564 30	100	2,564 30
12	12	11	Ballast	1,664 55	1,664 55	100	1,664 55
13	13	12	Tracklaying and surfacing	4,194 50	4,194 50	100	4,194 50
14	14	13	Roadway tools	154 06	154 06	100	154 06
15	15	14	Fencing right of way	328 48	328 48	100	328 48
16	16	15	Crossings and signs	39 46	39 46	100	39 46
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telegraph and telephone lines	459 13	459 13	100	459 13
20	20	18	Station buildings and fixtures	2,320 00	2,320 00	100	2,320 00
21	21	18	Platforms, walks, paving and curb				
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses	503 70	503 70	100	503 70
24	24	20	Transfer and turntables, cinder pits, etc.				
25	25	20	Miscellaneous shop buildings and structures				
26	26	21	Shop machinery and tools	190 28	190 28	100	190 28
27	27	22	Water stations	432 18	432 18	100	432 18
28	28	23	Fuel stations	823 78	823 78	100	823 78
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures				
38	37	32	Transportation of men and material	203 13	203 13	100	203 13
39	38	33	Rent of equipment	135 00	135 00	100	135 00
40	38	34	Repairs of equipment	84 97	84 97	100	84 97
41	--	35	Earning and operating expenses during construction				
42	--	35½	Injuries to persons				
43	--	36	Cost of road purchased				
44	39	37	Steam locomotives	6,349 15	6,349 15	89	5,642 40
45	--	38	Electric locomotives				
46	40	39	Passenger train cars	5,544 24	5,544 24	90	4,989 82
47	41	40	Freight train cars	379 70	585 90	58	341 77
48	42	41	Work equipment	242 42	242 42	90	218 18
49	43	42	Floating equipment				
50	--	43	Law expenses	904 74	904 74	100	904 74
51	44	44	Stationery and printing	108 65	108 65	100	108 65
52	44	45	Insurance				
53	45	46	Taxes				
54	--	47	Interest and commission	638 99	638 99	100	638 99
55	45	48	Other expenditures	4,533 30	4,533 30	100	4,533 30
57	46	--	Stores and supplies on hand for use in California				
			Grand total	$79,691 30	$83,525 25	98	$81,995 71
			Average per mile for main track				

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EXHIBIT "B."

Owning company, Quincy Western Railway Company; operating company, Quincy Western Railway Company; operating division, entire line; from Marston to Quincy; county, Plumas.

Submitted with report of R. C. Ashworth, assistant engineer. Date compiled, March, 1915. Main line first track, 5.29 miles; yard tracks, sidings, etc., 0.84 miles; total, 6.13 miles.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
37	--	1	Engineering	$1,327 10	$2,804 53	100	$2,804 53
1	1	2	Right of way and station grounds	5,851 15	2,329 10	100	2,329 10
2	2	3	Real estate				
3	3	4	Grading	11,895 50	13,257 01	108	14,300 90
4	4	5	Tunnels				
5	5	6	Steel bridges and trusses				
6	6	6	Pile and frame truestles	1,754 55	1,786 56	67	1,197 00
7	7	6	Culverts	1,452 68	1,233 63	75	925 23
8	8	7	Ties	7,875 55	8,120 70	53	4,301 27
9	9	8	Rails	16,725 64	16,844 51	80	13,475 61
10	10	9	Frogs and switches	564 56	651 02	85	555 68
11	11	10	Track fastenings and other material	2,409 56	2,268 06	80	1,819 58
12	12	11	Ballast	1,664 55	1,747 77	100	1,747 77
13	13	12	Tracklaying and surfacing	4,194 50	4,894 07	74	3,611 83
14	14	13	Roadway tools	154 06	157 91	86	135 71
15	15	14	Fencing right of way	328 48	388 93	64	248 41
16	16	15	Crossings and signs	39 46	38 46	80	30 77
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telegraph and telephone lines	459 13	767 42	95	729 05
20	20	18	Station buildings and fixtures	2,320 00	2,106 71	90	1,896 04
21	21	18	Platforms, walks, paving and curb				
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses	563 70	528 01	80	422 40
24	24	20	Transfer and turntables, cinder pits, etc.				
25	25	20	Miscellaneous shop buildings and structures				
26	26	21	Shop machinery and tools	190 28	202 00	100	202 00
27	27	22	Water stations	432 18	458 53	95	435 62
28	28	23	Fuel stations	823 78	639 37	90	575 49
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures				
38	37	32	Transportation of men and material	203 13			
39	38	33	Rent of equipment	135 00			
40	38	34	Repairs of equipment	84 97			
41	--	35	Earning and operating expenses during construction				
42	--	35½	Injuries to persons				
43	--	36	Cost of road purchased				
44	39	37	Steam locomotives	6,349 15	6,412 64	--------	5,698 52
45	--	38	Electric locomotives				
46	40	39	Passenger train cars	5,544 24	5,599 08	--------	5,039 72
47	41	40	Freight train cars	379 70	353 50	--------	265 13
48	42	41	Work equipment	242 42	244 84	--------	221 12
49	43	42	Floating equipment				
50	--	43	Law expenses	904 74	560 91	100	560 91
51	44	44	Stationery and printing	108 65			
52	44	45	Insurance				
53	45	46	Taxes				
54	--	47	Interest and commission	638 99	1,441 33	100	1,441 33
55	45	48	Other expenditures	4,533 30	360 33	100	360 33
57	46	--	Stores and supplies on hand for use in California		200 00	100	200 00
			Grand total	$79,691 30	$76,397 53	86	$65,531 05
			Average per mile for main track	15,064 51	14,441 87	--------	12,387 72
			Total road I.C.C. accounts 1 to 36	69,989 51	61,224 30	85	51,743 99
			Total equipment, I.C.C. accounts 37 to 42	12,515 51	12,610 66	89	11,224 49
			Total general expenses, I.C.C. accounts 43 to 48	6,185 68	2,362 57	100	2,362 57

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DECISION No. 2865.

TUJUNGA VALLEY IMPROVEMENT ASSOCIATION

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 433.

NOBORU OMURA

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 434.

TUJUNGA TERRACE IMPROVEMENT ASSOCIATION

vs.

TUJUNGA WATER AND POWER COMPANY.

Case No. 441.

Decided November 1, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas, the Tujunga Water and Power Company was on September 13, 1915, ordered to develop an additional water supply described in that order within a term of forty-five (45) days subsequent to that date, that term being extended five days by reason of delay in delivery of the Commission's order to defendant; and

Whereas, the defendant herein has filed application for extension of the time within which to satisfy the order of the Commission, claiming that it was unable to obtain funds and that there is no demand at this time for the increased supply,

It is hereby ordered that the time within which to satisfy the order of the Commission may be and it hereby is extended thirty (30) days from the date hereof.

And it is further ordered that within this period of time the defendant herein shall either have constructed works sufficient to comply with the order of the Commission or provide undoubted proof that such work will be constructed in advance of the irrigation season of 1916.

The foregoing supplemental order is hereby approved and ordered filed as the supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of November, 1915.

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DECISION No. 2866.

CHARLES S. HARDY

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 805.

Decided November 3, 1915.

Complainant, operating a packing plant in the city of San Diego, attacks the commodity rate of 15 cents per 100 pounds on fresh meats and packing house products, straight or mixed carloads, Los Angeles to San Diego, contending that such rate is out of line with its general rate structures giving Los Angeles packers an undue advantage over San Diego packers.

***Held*, That there are no grounds upon which such rate can be deemed unduly low, though there is also no reason why the same rate should not apply San Diego to Los Angeles as well as from the latter to the former point, and recommendation made that defendant change its tariffs accordingly. Complaint dismissed without prejudice.**

Charles S. Hardy, in propria persona.

E. W. Camp, for Defendant.

F. P. Gregson, for Associated Jobbers of Los Angeles, Intervenors.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

Complainant, Charles S. Hardy, is engaged in the packing house industry at San Diego where his office and plant are located. His business was established in the year 1885 and consists of the buying and slaughtering of cattle, sheep and hogs, and the selling of both the fresh and cured products thereof.

The complainant attacks as discriminatory to the packing house interests of San Diego the commodity rate of 15 cents per hundred pounds charged by defendant for the transportation of straight or mixed carloads, minimum weight 26,000 pounds, of fresh meat and packing house products from Los Angeles to San Diego carried in Item 970, The Atchison, Topeka and Santa Fe Railway System Tariff No. 5908-G, C. R. C. 255. This commodity rate was established in 1907 and made a reduction on fresh meat from the Western Classification rating of 3d Class, 25 cents per 100 pounds, to 15 cents per 100 pounds. Complainant prays that the commodity rate be ordered canceled and Western Classification ratings applied on future traffic.

The Associated Jobbers of Los Angeles, by petition of intervention, protested against the granting of the application on the grounds that

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the cancellation of the rate would result in a serious hardship and loss of valuable business to its members engaged in the fresh meat and packing industry with plants located at Los Angeles.

Evidence was introduced by complainant in an effort to show that the commodity rate on fresh meat and packing house products was relatively too low as compared with the rates on cattle, sheep and hogs, especially when the live stock was moved from Los Angeles to San Diego at the local rates.

In the case of *Geo. A. Long* vs. *Southern Pacific Co.*, 1 C. R. C. 913, decided November 13, 1912, this Commission ordered the defendant to reduce its rates on fresh meats and on packing house products from Imperial to Los Angeles, and in referring to the relationship of rates between live stock and packing house products, said:

> "The question of what relationship, if any, should exist between packing house products and live stock has been several times before the Interstate Commerce Commission, and it has also found its way into the courts. In the case of *Interstate Commerce Commission* vs. *Chicago Great Western Railway Company*, 141 Fed. 1003, the Circuit Court had before it questions similar to those involved in this case. The court there determined 'that the cost of service in proportion to the value of both kinds of commodities was greater in carrying live stock' and further 'it was also substantially agreed by the witnesses that the risk of carriage notwithstanding the double value of fresh meats was not as great in carrying fresh meats and packing house products as in carrying live stock. * * * This is true on account of the damages for delay to live stock and additional damage in cases of wrecks.'
>
> The Supreme Court of the United States specifically approved these findings of the Circuit Court when the matter came up on appeal, and disposed of the contention of the carriers that the cost of transporting packing house products is higher than the cost of transporting live stock, and that the risk is greater upon the former than the latter kind of traffic, in the same manner as I feel we should dispose of the same questions involved in this case.
>
> I find from the evidence that the cost of transporting packing house products is less, under the circumstances of this case, for the carriage of the product than for the live cattle from which the product is derived, and likewise that the risk to the carrier of transporting the live cattle is greater than for transporting the products which would be obtained from slaughtering the same cattle and transporting the products to the same market."

It is clear from the testimony and from the cross-examination of witnesses that much of the live stock slaughtered at San Diego is secured from points in Arizona, New Mexico, Utah and Idaho, from which points the rates are the same to San Diego as to Los Angeles.

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This would indicate that San Diego in connection with consignments from the territory mentioned has an advantage over Los Angeles firms who ship the fresh meat and packing house products into San Diego. This is also true with respect to live stock forwarded from certain points in the San Joaquin and Imperial valleys from which points the rates are but little higher to San Diego than to Los Angeles.

Witnesses for intervenors introduced exhibits and testimony explanatory of the total charges against carloads of mixed packing products moving from Los Angeles to San Diego. These charges included the cost of the ice placed in the refrigerator cars, the switching charges and the refrigerator car rental, items not mentioned in the exhibits and comparisons entered by the complainant.

These exhibits also show that the cars move from the packing houses in Los Angeles on certain days and that the tonnage depends upon the amount of fresh meat sold in advance at San Diego, and that cars frequently go forward underloaded. In May, June and July, 1915, all consignments forwarded by one shipper totaled less than 26,000 pounds per car; in a car on May 2, 1915, the total weight was but 13,123 pounds, indicating that Los Angeles has difficulty in securing sufficient tonnage to load to minimum weight.

It is thus apparent that the differential either in favor of or against the San Diego packers in the transportation charges of fresh meat and packing house products, as compared with Los Angeles, depends upon the point of origin of the live stock and the accessorial charges which must be assumed by the Los Angeles shippers.

Defendant testified that the rate of 15 cents per hundred pounds was established to enable the Los Angeles packers to reach the San Diego market in competition with traffic moving by water from San Francisco, especially packing house products, and that the rate because of water competition, while less than normal, yielded a profit. No explanation was made as to why the rate was not published to apply between Los Angeles and San Diego instead of applying only in the one direction.

There is no evidence tending to show that the rate complained of is unreasonable *per se*, but apparently there is no reason why San Diego should not have the same rate as Los Angeles. Complainant made no effort to prove discrimination, nevertheless, I am of the opinion that the rate of 15 cents per hundred pounds on fresh meat, straight carloads, or in mixed carloads with packing house products, should be made to apply between San Diego and Los Angeles, instead of in the one direction and I recommend that The Atchison, Topeka and Santa Fe Railway Company change its tariff accordingly.

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I submit the following form of order:

ORDER.

Complaint having been filed by Charles S. Hardy against The Atchison, Topeka and Santa Fe Railway Company in the above entitled case, and a hearing having been held and the Commission being fully apprised in the premises,

It is hereby ordered that the complaint be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of November, 1915.

DECISION No. 2867.

IN THE MATTER OF THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY FOR AN ORDER OF THE RAILROAD COMMISSION AUTHORIZING IT TO ISSUE, SELL AND DELIVER ITS GENERAL AND REFUNDING MORTGAGE GOLD BONDS TO THE PAR VALUE OF FIVE MILLION DOLLARS AND ITS FIRST PREFERRED STOCK TO THE PAR VALUE OF TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS, AND TO USE THE PROCEEDS FROM THE SALE OF SAID BONDS AND SAID FIRST PREFERRED STOCK IN THE MANNER AND FOR THE PURPOSES DESCRIBED HEREIN.

Application No. 1188.

Decided November 3, 1915.

Applicant having heretofore been authorized to issue certain preferred stock and general and refunding mortgage bonds, now applies for and is granted permission to issue certificates for shares of preferred stock heretofore authorized, to reimburse its treasury in the sum of $1,447,500.00, being moneys used in the payment of certain gold notes and also to use the proceeds from the sale of general and refunding mortgage bonds, heretofore authorized, for the certain purposes as specified in "Exhibit A."

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL OPINION.

In a second supplemental application filed in connection with this proceeding, applicant asks that it be given authority to issue and deliver its certificates for shares of first preferred stock, heretofore authorized, up to and including March 1, 1917; that it be permitted to reimburse its treasury in the sum of $1,447,500.00, which it used to

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pay gold notes dated December 15, 1914; and that it be authorized to use a portion of the proceeds obtained from the sale of its first preferred stock and general and refunding mortgage gold bonds, the sale of which has heretofore been authorized by this Commission, for purposes set forth in Exhibit "A" attached to the second supplemental application.

On July 1, 1914, this Commission issued its decision (No. 1632) authorizing applicant to issue $12,500,000.00 first preferred stock at not less than 82½ per cent of its par value. The order of the Commission provides that the authority to issue stock other than the first preferred stock to be exchanged for original preferred stock, shall apply only to stock issued on or before the first day of November, 1915.

Applicant reports that up to the close of business on October 23, 1915, it received cash, on account of the stock subscription, the sum of $9,842,032.50. That it sold its first preferred stock at $82.50 per share until June 26, 1915, when the price was raised to $85.00 per share, and that on October 1, 1915, the price was increased to $87.50 per share. Applicant reports that some of the subscriptions will not mature until January 1, 1917, and that it will be called upon to issue and deliver certificates for shares of first preferred stock up to and including March 1, 1917. For that reason, applicant requests that the aforementioned order of the Commission be modified accordingly.

By a decision dated January 20, 1915 (No. 2087), this Commission authorized Pacific Gas and Electric Company to sell $5,000,000.00, face value, of general and refunding bonds, being bonds numbered M.25431 and 30430, inclusive, at not less than 85 per cent of their face value plus accrued interest.

The issuance of the bonds was authorized subject to certain conditions by Decision No. 1632. Thereafter applicant was permitted to pledge the bonds to secure in part $4,000,000.00 one-year gold notes, the issuance of which was authorized by this Commission. When it received authority to sell the bonds, it was on condition that the proceeds be used to pay the notes or for other proper capital purposes.

Applicant now reports that the $4,000,000.00 face value of gold notes have been paid and canceled. To accomplish this end, it has used $2,552,500.00 obtained from the sale of $3,000,000.00 face value of general and refunding bonds and $1,447,500.00 from money which it has applied to the reimbursement of its treasury under the provisions of Decision No. 1632. In effect, it has used funds in its treasury in the amount of $1,447,500.00 to pay notes, and for which it now seeks to reimburse its treasury.

By Decision No. 1632 applicant was authorized to use part of the proceeds to be obtained from the sale of its first preferred stock and

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general and refunding bonds therein authorized for the purposes mentioned in the order. The remaining portion of the proceeds is subject to a condition reading:

> "(c) For other purposes properly capitalizable as specified in section 52 of the Public Utilities Act, when applicant shall have specified such purposes and the amounts claimed for each and shall have secured from the Railroad Commission a supplemental order authorizing such expenditure of the balance of the proceeds."

In compliance with the aforementioned condition, applicant has submitted a statement marked Exhibit "A," showing the purposes for which it desires to expend the proceeds to be obtained from the sale of its general and refunding bonds and first preferred stock.

SECOND SUPPLEMENTAL ORDER.

Pacific Gas and Electric Company having applied to this Commission for authority to issue and deliver certificates for shares of its first preferred stock, heretofore authorized, up to and including March 1, 1917; and for authority to reimburse its treasury in the sum of $1,447,500.00, and for authority to expend the proceeds obtained or to be obtained from the sale of its general and refunding mortgage bonds and first preferred stock for the purposes indicated in Exhibit "A" attached to the second supplemental application, and this Commission finding that the purposes for which the proceeds of said bonds and stock are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Decision No. 1632, dated July 1, 1914, be amended, and hereby is amended, so as to authorize Pacific Gas and Electric Company to issue and deliver certificates for shares of first preferred stock, the issuance of which was authorized by said decision, up to and including March 1, 1917.

It is hereby further ordered that Pacific Gas and Electric Company be given authority, and hereby is given authority, to reimburse its treasury in the sum of $1,447,500.00, which it used in the payment of its gold notes dated December 15, 1914, the funds to make said reimbursement to be obtained from the sale of general and refunding mortgage bonds and first preferred stock, the issuance of which was authorized by Decision No. 1632, dated July 1, 1914.

It is hereby further ordered that Pacific Gas and Electric Company be given and hereby is given authority to use the proceeds from the sale of its general and refunding mortgage bonds and its first preferred stock, the issuance of which was authorized by Decision No. 1632, dated July 1, 1914, for the purpose and in the amounts set forth in Exhibit "A," attached to this second supplemental application.

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It is hereby further ordered that Decision No. 1632, dated July 1, 1914, and Decision No. 2087, dated January 20, 1915, shall remain in full force and effect, except as modified by this second supplemental order.

It is hereby further ordered that the authority herein given is given upon the condition that it shall not relieve the applicant from such extension of its public utility service as this Commission may hereafter find to be required by public convenience and necessity.

Dated at San Francisco, California, this 3d day of November, 1915.

DECISION No. 2868.

IN THE MATTER OF THE APPLICATION OF HERMOSA BEACH WATER COMPANY TO SELL, AND HERMOSA BEACH WATER CORPORATION TO BUY, A CERTAIN WATER SYSTEM; AND OF HERMOSA BEACH WATER CORPORATION TO ISSUE BONDS TO THE PAR VALUE OF EIGHTY THOUSAND DOLLARS, AND STOCK IN THE SUM OF SIXTY THOUSAND DOLLARS.

Application No. 1346.

Decided November 3, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas, this Commission on October 13, 1914 (Decision No. 1866), authorized Hermosa Beach Water Corporation to execute a deed of trust to Title Insurance and Trust Company of Los Angeles as security for an issue of $80,000.00 of first mortgage 6 per cent gold bonds; and

Whereas, applicant now desires to amend said deed of trust to provide for a sinking fund on the above mentioned bonds as follows:

From the revenues collected during the year—

Feb. 1, 1916, to Feb. 1, 1917	$2,000
Feb. 1, 1917, to Feb. 1, 1918	3,000
Feb. 1, 1918, to Feb. 1, 1919	3,000
Feb. 1, 1919, to Feb. 1, 1920	3,000
Feb. 1, 1920, to Feb. 1, 1921	3,000
Feb. 1, 1921, to Feb. 1, 1922	4,000
Feb. 1, 1922, to Feb. 1, 1923	4,000
Feb. 1, 1923, to Feb. 1, 1924	5,000
Feb. 1, 1924, to Feb. 1, 1925	5,000
Total	$32,000

And it appearing to this Commission that applicant's request is reasonable and should be granted,

It is hereby ordered that Hermosa Beach Water Corporation be and it is hereby authorized to amend its deed of trust, dated February 1,

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1915, to Title Insurance and Trust Company of Los Angeles by inserting therein a sinking fund provision substantially of the form contained in a proposed indenture filed with this Commission on October 27, 1915, and marked Exhibit "1."

The authority herein granted is granted upon the condition that before said deed of trust is finally amended applicant shall secure written consent to such amendment from all the holders of bonds heretofore issued under said deed of trust.

Dated at San Francisco, California, this 3d day of November, 1915.

DECISION No. 2869.

IN THE MATTER OF THE APPLICATION OF SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA FOR A CERTIFICATE THAT PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXERCISE OF A RIGHT GRANTED TO APPLICANT UNDER A FRANCHISE.

Application No. 1939.

Decided November 4, 1915.

REPORT OF THE COMMISSION.

Southern Counties Gas Company of California having applied to this Commission for a certificate of public convenience and necessity to exercise the rights granted to it by the board of supervisors of Los Angeles County in Ordinance No. 408, New Series, and by the board of supervisors of Orange County in Ordinance No. 84, in so far as said franchises authorize the construction of the following described lines:

> "A 4" pipe line from the south line of section seven, township three south, range ten west, county of Orange, State of California, in the general northwesterly direction about $7\frac{4}{10}$ miles to the city of Whittier, Los Angeles County";

and

> "A 2" line on Central avenue, east from said 4" line, a distance of about $1\frac{1}{2}$ miles to the town of La Habra. About $1\frac{1}{2}$ miles of 2" lateral lines in said town of La Habra";

all of which lines are described on a map attached to the application in this proceeding and marked Exhibit "A"; and the Commission being of the opinion that a public hearing is not necessary in this matter and that the application should be granted,

It is hereby ordered that this application be and the same is hereby granted.

Dated at San Francisco, California, this 4th day of November, 1915.

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DECISION No. 2870.

IN THE MATTER OF THE APPLICATION OF THE CONSOLIDATED SECURITIES COMPANY FOR PERMISSION TO ISSUE PROMISSORY NOTES SECURED BY MORTGAGE OR DEED OF TRUST UPON PROPERTY NOT USEFUL OR NECESSARY TO A PUBLIC UTILITY.

Application No. 1922.

Decided November 3, 1915.

Applicant applies for permission to issue five promissory notes, aggregating the total amount of $105,000.00, in connection with which it appears that it has already issued certain notes without the necessary authorization of this Commission, but as all of such notes are and will be secured by a mortgage covering property other than that used or useful in its public utility business, it is authorized to issue ten promissory notes aggregating $114,708.26.

J. W. Williams, of Goudge, Williams, Chandler & Hughes, for Applicant.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

In this application, Consolidated Securities Company asks authority to issue promissory notes, as hereinafter indicated, and secure the payment of the same by mortgages covering certain property which is not used for public utility purposes.

Applicant's principal business is that of buying and selling real estate. Incidental to such business, it operates a water plant supplying the town of San Fernando and vicinity in Los Angeles County.

Applicant desires to acquire certain property from C. Q. Stanton for the sum of $105,200.00. In payment for said property, it desires to issue to C. Q. Stanton its secured promissory notes as follows:

Payee	Date	Term	Rate of Interest	Face amount
C. Q. Stanton	October 7, 1915	1 year	6%	$10,000 00
C. Q. Stanton	October 7, 1915	2 years	6%	15,000 00
C. Q. Stanton	October 7, 1915	3 years	6%	20,000 00
C. Q. Stanton	October 7, 1915	4 years	6%	25,000 00
C. Q. Stanton	October 7, 1915	5 years	6%	35,200 00

The payment of the notes is to be secured by a mortgage covering property of applicant not used for public utility purposes. The one-year note to be issued to C. Q. Stanton does not require the authorization of this Commission.

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Heretofore applicant issued the following secured promissory notes:

Payee	Date	Term	Rate of interest	Face amount
Hattie Strong	October 1, 1915	1 year	8%	$6,350 00
Hattie B. Waite	February 6, 1914	3 years	7%	2,489 26
Herman Brisacher	March 27, 1914	5 years	8%	7,500 00
O. H. Perry	November 17, 1913	1 year	7%	1,800 00
H. L. Childs	March 27, 1915	3 years	8%	560 00
Frank Halberg	July 21, 1915	3 years	8%	800 00

These notes were issued without the consent of this Commission. At the time the notes were executed, applicant reports that it was of the opinion that this Commission's consent was not necessary, inasmuch as the proceeds obtained from the notes were not used for public utility purposes, nor were the mortgages executed in favor of the various payees made to cover public utility property.

Applicant reports that it has made arrangements with Hattie Strong to issue to her a note for $6,350.00, to be dated October 14, 1915, and payable in one year, in renewal of the note dated October 1, 1915, now held by said Hattie Strong for a like amount.

In Exhibits "B-1" and "B-2," applicant reports the cost and appraisal of its property as follows:

Total cost to date	$273,661 75
Appraised value	300,680 00
Encumbrance	173,783 06
Equity	135,896 94

Inasmuch as neither the mortgage to be executed to secure the payment of the notes to be issued to C. Q. Stanton; nor the mortgages heretofore executed to secure the payment of the note payable to Hattie Strong; the note payable to Hattie B. Waite; the note payable to Herman Brisacher; the note payable to H. L. Childs; the note payable to O. H. Perry, or the note payable to Frank Halberg cover public utility property, this Commission's authorization is not necessary so far as the execution of the mortgages is concerned. However, the consent of this Commission must be obtained to issue notes for a term in excess of one year. But in view of the fact that the proceeds to be obtained from the issuance of the notes will not be used for public utility purposes, I am not inclined to scrutinize the purposes for which the notes are to be issued in the same detailed manner as though the proceeds were to be used for public utility purposes.

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Accordingly, I recommend that this application be granted and herewith submit the following form of order:

ORDER.

Consolidated Securities Company having applied to this Commission for authority to execute its promissory notes, as set forth in the foregoing opinion, and to secure the payment of the same by mortgages not covering any of its public utility property, and a hearing having been held and it appearing to the Commission that the purposes for which the applicant proposes to use the proceeds of the notes are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Consolidated Securities Company be given authority, and hereby is given authority, to issue its promissory notes as follows:

Payee	Date	Term	Rate of interest	Face amount
C. Q. Stanton	October 7, 1915	2 years	6%	$15,000 00
C. Q. Stanton	October 7, 1915	3 years	6%	20,000 00
C. Q. Stanton	October 7, 1915	4 years	6%	25,000 00
C. Q. Stanton	October 7, 1915	5 years	6%	35,200 00
Hattie Strong	October 14, 1915	1 year	8%	6,350 00
Hattie B. Waite	February 6, 1914	3 years	7%	2,498 26
Herman Brisacher	March 27, 1914	5 years	8%	7,500 00
O. H. Perry	November 17, 1913	1 year	7%	1,800 00
H. L. Childs	March 27, 1915	3 years	8%	560 00
Frank Halberg	July 21, 1915	3 years	8%	800 00
Total				$114,708 26

It is hereby further ordered that the foregoing authority be given upon the following conditions and not otherwise:

(1) Within thirty days after the issuance of any of the notes herein authorized to be issued, applicant shall report to this Commission the payee of such note, the date, its term, the rate of interest and face value thereof, also the purpose for which the note was issued.

(2) The authority herein given shall not become effective until the fee prescribed in section 57 of the Public Utilities Act, as amended, has been paid.

(3) The authority herein given to issue notes shall only apply to such notes as may be issued on or before March 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of November, 1915.

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DECISION No. 2871.

IN THE MATTER OF THE APPLICATION OF GRANGERS BUSINESS ASSOCIATION FOR APPROVAL OF RENEWAL OF A WHARF FRANCHISE.

Application No. 1913.

Decided November 5, 1915.

Houghton & Houghton, for Applicant.

REPORT OF THE COMMISSION.

At the hearing of this application on October 29, 1915, applicant showed that the board of supervisors of Contra Costa County had renewed its wharf franchise, and showed a satisfactory reason for delay in erecting improvements thereunder. A previous renewal of this same wharf franchise was approved by this Commission in Decision No. 1995.

ORDER.

Grangers Business Association having applied to this Commission for approval of an order and resolution of the board of supervisors of the county of Contra Costa, State of California, made on August 2, 1915, renewing a right theretofore granted applicant to construct and maintain a wharf on the southerly shore of the straits of Carquinez,

And a hearing having been had in this matter, and the Commission being of the opinion that the application should be granted,

It is hereby ordered that said application be and the same is hereby granted.

Dated at San Francisco, California, this 5th day of November, 1915.

DECISION No. 2872.

IN THE MATTER OF THE APPLICATION OF SAN DIEGO AND ARIZONA RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF THREE PROMISSORY NOTES.

Application No. 1941.

Decided November 5, 1915.

Harry L. Titus and *R. G. Dilworth,* for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

San Diego and Arizona Railway Company having filed its petition for an order authorizing the issue of three promissory notes in the

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amounts and for the purpose hereinafter specified, and a public hearing having been held in San Diego on November 1, 1915, and the Railroad Commission finding that the purpose for which said promissory notes are to be issued are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that San Diego and Arizona Railway Company be and the same is hereby authorized to issue its three promissory notes, each in the sum of $25,000.00, due one day after date, payable to The Anglo and London Paris National Bank, of San Francisco, bearing interest at the rate of 5 per cent per annum, payable monthly, and to renew said promissory notes or either of them, from time to time, if desirable, during a term or terms not to extend beyond two years from the date of this order, at a rate of interest not in excess of 5 per cent per annum, on the following conditions and not otherwise:

(1) San Diego and Arizona Railway Company shall issue the promissory notes herein authorized to be issued at not less than their face value and at a rate of interest not in excess of 5 per cent per annum.

(2) San Diego and Arizona Railway Company shall use the proceeds of the promissory notes herein authorized to be issued, for the purpose of paying two promissory notes, each dated December 29, 1913, payable to Bank of Commerce and Trust Company, of San Diego, in the respective sums of $35,000.00 and $40,000.00, each note due sixty days after date and bearing interest at the rate of 6 per cent per annum, and of refunding such promissory notes as may be issued, from time to time, under the terms of this order.

(3) San Diego and Arizona Railway Company shall report to the Railroad Commission, within ten days after the issue of any promissory note hereunder, the fact of the issue, the purpose for which the note was issued, and the terms and conditions of the issue.

(4) This order shall not become effective until San Diego and Arizona Railway Company has paid the fee prescribed by section 57 of the Public Utilities Act.

(5) This order shall apply only to such promissory note or notes as have been issued on or before July 1, 1917.

The foregoing order is hereby approved and ordered filed as the order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of November, 1915.

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Decision No. 2873.

IN THE MATTER OF THE APPLICATION OF THE COUNCIL OF THE CITY OF RICHMOND FOR PERMISSION TO CONSTRUCT THIRD, FIFTH AND EIGHTH STREETS AT GRADE ACROSS THE TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA.

Application No. 1810.

Decided November 5, 1915.

City of Richmond applies for permission to open Third, Fifth and Eighth streets across the tracks of the Santa Fe Railway Company at grade, and an investigation showing that there are already three crossings open in this vicinity, and that the three additional crossings requested are not required by public necessity, applicant is authorized to open the three streets as requested, provided that it abandon and legally close the crossings at Second and Sixth streets, and install an automatic flagman at the Third street crossing.

D. J. Hall, for Applicant

Platt Kent and *J. W. Walker,* for The Atchison, Topeka and Santa Fe Railway Company.

Report of the Commission.

Gordon, *Commissioner.*

In this application the city of Richmond asks permission to open Third, Fifth and Eighth streets across the track of the branch line of The Atchison, Topeka and Santa Fe Railway Company, connecting Oakland with the main line of the Valley Division at Richmond.

The track in the portion of the city where these crossings are sought runs in an east and west direction and parallels Ohio street, which is about 150 feet south of the center of the track. The streets denominated by numbers are north and south streets and all of them from First to Tenth, inclusive, have been laid out north of the track to the right of way line and on the south to a tier of lots which lies between Ohio street and the railroad right of way. The subdivisions north and south of the track were made without regard to one another, and although the blocks are uniformly 225 feet in width the streets are not in the same line and are 60 feet in width south of the track and 50 feet wide north of it. At the present time, in this district from First to Tenth streets about one-half mile in length, there are three streets opened, namely, Second, Sixth and Tenth.

It is now proposed to open the three streets applied for in this application. The city has already secured the lots necessary for them in

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the block between Ohio street and the railroad right of way, and has paid therefor about $5,800.00. The property for the crossing at Third street was acquired before the present Public Utilities Act was in force, but the purchase of lots for the other two crossings was made subsequent to the effective date of that act, although no proceedings had at that time been started before this Commission looking to the opening of the crossings.

The Santa Fe opposed the granting of this application. At the hearing held in this matter the representatives of that company took the position that the crossings now open amply serve the needs of the public and while these proposed crossings might add something to the convenience of the people of Richmond, they were by no means necessary and that the added convenience following their construction would not overbalance the hazard to be incurred in opening three additional crossings over a track which carries 24 scheduled and several extra trains per day.

The main business section of Richmond is several blocks north of the track between First and Tenth streets. The territory south of the track is almost exclusively a residence district, and it is not well built up. No statistics were offered by either the applicant nor the Santa Fe to show the amount of traffic which now crosses daily from one side of the track to the other, in this vicinity, but I am satisfied from my own observations on the ground, and from the testimony of witnesses at the hearing, that it does not justify six crossings within a distance of 2,600 feet. At the same time I believe that the streets now open are not sufficient to serve the public as conveniently as it may reasonably expect to be served.

It was testified by one witness that if Third street were opened it would become one of the most important of these cross streets, and I believe if the city desires this crossing sufficiently to close Second street permission should be granted them to open it across the track. I believe, further, that between Third and Tenth streets it is reasonable that the city should be permitted to have two crossings not including Third street or Tenth street.

Sixth street, although now open, is not a legal highway, and the city neither owns the lots between Ohio street and the railroad right of way nor has an easement over the track. On account of the fact that this street is partially occupied by a street car track and that a building more or less obscures the view of it from the north it forms a dangerous crossing which could very well be closed. With this street closed and Fifth and Eighth streets opened this territory between First and Tenth streets would have four open crossings so located that public convenience would, in my opinion, be served by them for several years to

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come in spite of the growth and development which are taking place in the city.

If the city decides to open the streets applied for, under the conditions I have outlined, the dangerous offsets, occasioned by the failure of those who subdivided this district to make the streets north of the track in the same line with the streets south of the track, should be avoided by uniting the streets over the track and over the lots between Ohio street and the track by a curved roadway constructed about as shown on the map filed with the Commission by the city after the hearing had been held. It will probably not be difficult to do this as the adjacent lots are not occupied, and the property owned by the city can be traded for such other property as is needed.

At Fifth and Eighth streets the proposed crossings are comparatively open and a good view can be obtained of approaching trains, and although it will undoubtedly be but a short time until buildings will be erected at the intersections of the track and the roadway which will obscure the view at these points, no protection is now needed there. At Third street the building at the southwest corner of the intersection obscures the view of the eastbound trains, and I believe if this crossing is opened it should be protected by an automatic flagman.

I recommend the following form of order:

ORDER.

City of Richmond, Contra Costa County, California, having on July 31, 1915, applied to the Commission for permission to construct Third, Fifth and Eighth streets, in that city, at grade across the track of The Atchison, Topeka and Santa Fe Railway Company, and a public hearing having been held, and it appearing that under certain conditions this application should be granted,

It is hereby ordered that permission be and the same hereby is granted the city of Richmond, Contra Costa County, California, to construct Third, Fifth and Eighth streets at grade over the track of The Atchison, Topeka and Santa Fe Railway Company, in the city of Richmond, Contra Costa County, California, subject to the following conditions and not otherwise, viz:

(1) These crossings shall be constructed of a width not less than twenty-four (24) feet, with grades of approach not exceeding four (4) per cent; shall be protected by suitable crossing signs, and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

(2) The entire expense of constructing said crossings shall be borne by applicant.

(3) The expense of maintaining said crossings thereafter to a point within two (2) feet of the rails of the track shall be borne by appli-

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cant. The expense of maintaining the crossings thereafter between the rails of the track and to a point two (2) feet outside thereof shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(4) Before Third street shall be opened the public highway now open at Second street over the track of The Atchison, Topeka and Santa Fe Railway Company shall be legally closed and abandoned as a public highway crossing.

(5) Before Fifth and Eighth streets shall be opened, the public highway now open at Sixth street over the track of The Atchison, Topeka and Santa Fe Railway Company shall be legally closed and abandoned as a public highway crossing.

(6) For the protection of Third street crossing there shall be installed an automatic flagman of a type approved by the Commission, and the cost of furnishing and installing the same shall be borne by applicant. The cost of maintaining this flagman thereafter shall be borne by The Atchison, Topeka and Santa Fe Railway Company.

(7) To avoid the offsets in the streets, which have been previously mentioned, the crossings of these streets when constructed shall be connected over the track and over the tier of lots between Ohio street and the railroad right of way by a curved roadway about as shown on the map filed with the Commission by the city subsequent to the hearing.

(8) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossings as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of November, 1915.

DECISION No. 2874.

IN THE MATTER OF THE APPLICATION OF THE MODESTO AND EMPIRE TRACTION COMPANY FOR AUTHORITY TO INCREASE CLASS AND COMMODITY RATES APPLYING BETWEEN MODESTO AND EMPIRE.

Application No. 1775.

Decided November 5, 1915.

Applicant, operating an electric road between Modesto and Empire, a distance of five miles, contends that under its present class and commodity rates it incurs

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an annual deficit amounting to over $6,000.00, and accordingly applies for permission to increase its rates, and it appearing that the increases asked for will amount to only approximately $1,100.00 per annum, application granted and recommendation made that applicant take steps to provide for itself a higher proportionment of the joint rates on traffic handled in connection with the Santa Fe Railway Company, as at present it receives only a very small percentage of such joint rates.

E. L. Dennet, for Applicant.

E. H. Zion, for Tuolumne Lumber Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Applicant, the Modesto and Empire Traction Company, hereinafter referred to as the traction company, is a common carrier under the Public Utilities Act and was organized October 7, 1911, under the laws of the State of California. It operates between Modesto and Empire, a distance of five miles, and transports freight and passengers locally, also traffic under joint arrangements in connection with The Atchison, Topeka and Santa Fe Railway Company, hereinafter designated the Santa Fe.

The traction company alleges that the revenue derived from its local freight traffic is insufficient to meet operating expenses and seeks authority to increase the class rates and certain commodity rates between Empire and Modesto, terminal points, also between the terminals and Riverside Park, a newly established station.

The following table shows the present rates and those proposed:

Class Rates, in Cents per 100 Pounds, Between Modesto, California, and Empire, California.

Class	1	2	3	4	5	A	B	C	D	E
Present	6	5	5	4	4	4	3	2½	2½	2½
Proposed	15	13	12	11	10	9	7	6	5	5

Commodity Rates in Cents Per Ton of 2,000 Pounds.

	Commodity			
	Lime, plaster, cement, gypsum	Gravel, sand, crushed rock	Lumber	Coal
Present	25	15	35	25
Proposed	50	40	50	50

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Between Riverside Park, California, and Modesto, California, or Empire, California.

Class	1	2	3	4	5	A	B	C	D	E
Present	6	5	5	4	4	3	3	2¾	2½	2½
Proposed	7½	6½	6	5½	5	4½	3½	4	2½	2½

Commodity Rates in Cents Per Ton of 2,000 Pounds.

	Commodity		
	Lime, plaster, cement, gypsum	Gravel, sand, crushed rock	Lumber
Present	25	15	35
Proposed	25	25	*25

*Reduction.

A statement of the operating revenue and expenses for six months, October, 1914, to March, 1915, inclusive, made part of the application, shows an operating deficit of $1,940.96, or an approximate operating loss of $3,900.00 for twelve months. This amount may be accepted as substantially correct as illustrated by figures taken from the annual reports filed with this Commission:

Fiscal year ending	Operating		
	Revenue	Expense	Deficit
June 30, 1912*	$5,161 76	$6,837 28	$1,675 52
June 30, 1913	10,593 00	13,498 79	2,905 79
June 30, 1914	11,545 80	16,328 58	4,782 78
Totals	$27,300 56	$36,664 65	$9,364 09

*October 24, 1911, to June 30, 1912.

In addition to the foregoing there was filed as an exhibit a statement of the entire earnings and expenses for twelve months, July 1, 1914, to June 30, 1915, inclusive, showing a deficit for that period of $6,702.61. The purpose of this exhibit is to substantiate applicant's contention that the loss is largely due to the inadequacy of its local freight rates. In arriving at a conclusion, the earnings as between local and interline freight and passenger traffic is segregated, allocated expenses deducted

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and the balance apportioned on a revenue percentage basis. A recapitulation of the exhibit follows:

	Freight		Passenger		Total
	Local	Interline	Local	Interline	
Earnings	$1,660 68	$3,237 59	$3,706 62	$796 15	$9,401 02
Expenses	2,874 19	5,593 08	6,282 57	1,353 79	16,103 63
Deficit	1,213 51	2,355 49	2,575 95	557 66	6,702 61

Applying the proposed rates to the tonnage moved locally under the various class and commodity rates for the six months ending April 30, 1915, as per a statement submitted at the hearing, the increase in revenue would be but $532.50 or $1,065.00 for the twelve months, thus reducing the local annual freight deficit from $1,213.51 to $148.51, and the total annual deficit from $6,702.61 to $5,637.61. It will thus be seen that the proposed increases in the local freight rates will afford the traction company but little relief.

The testimony shows that 66⅔ per cent of the total freight tonnage is handled under joint rates with Santa Fe and that the traction company's proportion is less than its locals ranging from ½-cent to 4 cents per hundred pounds. This arrangement is apparently somewhat out of line, for the traction company being a feeder and giving tonnage to the Santa Fe, which that company otherwise would not secure, should, in my opinion, receive a larger proportion of the through rates; what that proportion should be can not be determined in this case as the through rates and the division thereof are not before the commission. I would, suggest, however, that the carriers participating in the through rates endeavor to agree upon a more satisfactory division of the earnings which will be fair to all concerned.

Only one firm protested the changes and its objection was directed against the increase from 35 to 50 cents per ton, on lumber, carloads, between Modesto and Empire. The testimony indicated that but a small part of the lumber traffic moves on a combination of local rates and that if through rates were established to take care of this particular tonnage the objections would be withdrawn. I would recommend that the traction company endeavor to have such joint rates published as circumstances may make necessary.

The history of the traction company and the evidence produced at this hearing show that the property has not only been operated at a loss since its inception, but that for each succeeding year there has been an increased deficit, and it must be apparent to any fair-minded person that the applicant is not receiving a reasonable return. It is also in evidence, as previously stated, that the deficit is not entirely due to the

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local rates but is attributable to all classes of the service. I therefore recommend that applicant immediately take up with the Santa Fe the question of a different division of the through rates. The total additional revenue which will accrue by the granting of this application will be approximately $1,100.00 per annum, based on the local tonnage carried during the six months ending April 30, 1915.

I am convinced, after a careful consideration of all the evidence, that the application should be granted.

ORDER.

The Modesto and Empire Traction Company having applied to this Commission for permission to increase its local class rates and certain commodity rates for the transportation of freight between Modesto and Empire, Riverside Park and Modesto, and Riverside Park and Empire, and a regular hearing having been had and the Commission being fully apprised in the premises, and basing its order on the opinion which precedes this order,

It is hereby ordered that the application in the above entitled proceeding be and it is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 5th day of November, 1915.

DECISION NO. 2875.

KENWOOD RURAL TELEPHONE COMPANY

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 867.

Decided November 5, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The complainant in the above entitled proceeding having petitioned the Commission for permission to withdraw the complaint in this case,

It is hereby ordered that the complaint herein be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 5th day of November, 1915.

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DECISION No. 2876.

CITY OF ALAMEDA

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 468.

Decided November 5, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled matter having requested that this proceeding be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 5th day of November, 1915.

Decisions Nos. 2877 and 2878, grade crossings; not printed. See end of volume.

DECISION No. 2879.

IN THE MATTER OF THE PRACTICE OF WATER, GAS, ELECTRIC AND TELEPHONE UTILITIES REQUIRING DEPOSITS BEFORE RENDERING SERVICE.

Case No. 683.

Decided November 5, 1915.

Heretofore the Commission made its order establishing eighteen general rules governing service deposits, connections and extensions, and a number of utilities applying for a rehearing thereon, certain of the rules are reconsidered and several amended, the entire set to become effective December 1, 1915, and utilities are directed to file rules and regulations in accordance therewith within thirty days after such effective date.

Rules Nos. 2, 6, 7 and 17 amended as follows: Rule No. 2, amount of deposit: That a utility may require a deposit of $2.50 for domestic service excepting where consumer use service in excess of $2.00 per month, when they may require a deposit of an amount not exceeding two months service. Rule 6, discontinuance of service account unpaid bills for service theretofore rendered: In cases of disputed bills the consumer may deposit the amount of the bill with the Commission pending settlement of the dispute. Failure to make such deposit within fifteen days shall warrant a utility in discontinuing service. Rule 7, telegraph or toll service: A utility may, under nondiscriminatory rules, extend credit to a subscriber for such service. Should bill fail to be paid, service may be discontinued in accordance with the conditions laid down in

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Rule 5 and the utility refuse further service until the amount is paid and a deposit of twice the average amount of same made. Rule 17, providing for cost of extensions: Provision for payment of 6 per cent interest on advances covering extensions eliminated and rule approved providing that advances for extensions shall generally be considered as loans to be repaid as conditions warrant.

With these modifications petition for rehearing denied.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

On August 12, 1915, the Railroad Commission made its order establishing eighteen rules to be followed by water, gas, electric and telephone utilities in the matter of service charges, service connections and extensions. The order provided that it should become effective on October 11, 1915.

Prior to October 11, 1915, a number of petitions for rehearing were filed herein. We shall now discuss such points in these petitions as seem to require consideration.

RULE 2.

This rule now reads as follows:

> "If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in excess of twice the average periodic bill of consumers of his class; *provided,* that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities shall not exceed $2.50."

It has been urged that a deposit of $2.50 is too small in certain cases of domestic or residence consumers of water, gas, electric and telephone utilities. Attention should be drawn to the fact that the proper amount to be established as a deposit should be deduced not from a consideration of all the bills of a utility but from a consideration of only those cases in which deposits must be paid. Most large consumers are owners of property or can secure a satisfactory guarantor, and hence will not be called upon to make deposits. Further consideration reaffirms our conclusion that a deposit of $2.50 will be sufficient in most cases in which deposits will be made. However, with reference to some utilities and some classes of residence or domestic service, a deposit of $2.50 may not be sufficient. Accordingly, we have reached the conclusion that the following language should be added to Rule 2 as it now stands:

> "except that where the average of the monthly bills of those consumers of any class of domestic or residence service who make deposits is in excess of $2.00, such consumers may be called upon to make deposits of uniform amount not exceeding twice such average."

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It is, of course, obvious that if a utility acting under the rules and regulations herein established loses a bill or a part of a bill here or there, the amount thus lost, if reasonable efforts to collect the same are made by the utility, must be allowed by this Commission in establishing rates. The uniform classifications of accounts already promulgated by this Commission consistently allow uncollectible bills to be written off through the income account. Thus the claim of the utilities that these rules deprive them of their property in violation of constitutional guarantee is without merit.

RULE 6.

This rule now reads as follows:

> "A water, gas, electric or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service theretofore delivered."

The Commission intended to cover the case in which a consumer contests the amount of the bill and the utility, by threat of shutting off his service, compels the consumer to pay a bill which he believes to be unfair and unjust. Quite a number of such cases have come to the Commission's attention. To hold that a utility can thus be the judge in its own case and by reason of the need of the consumer for its service, compel him to pay an excessive bill, is manifestly unfair and unjust. We believe that the rule as now framed goes further than is necessary to accomplish the purpose which the Commission had in view, in that it prevents utilities from shutting off their service even in cases in which there is no dispute concerning the amount of the bill and in which the consumer simply refuses to pay an admittedly correct bill.

The rule should be modified to read as follows:

> "A water, gas, electric or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service theretofore delivered, in cases in which there is a dispute as to the amount of the bill. In case of such dispute, the consumer shall deposit with the Railroad Commission the amount claimed by the utility to be due, whereupon the Railroad Commission will investigate the facts and communicate its findings to the parties. Failure on the part of the consumer to make such deposit within fifteen days after demand by the utility that such deposit be made, shall warrant the utility in discontinuing the service."

RULE 7.

This rule now reads as follows:

> "A telephone utility may, under uniform, nondiscriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its patrons or to the extent of such deposits as any of its patrons desire to make."

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Some objection has been made to this rule for the reason that it does not specifically accord the telephone utility relief in case telegrams and long distance telephone messages which have been taken on credit are not paid for. In order to remove this objection, the rule should be revised to read as follows:

> "A telephone utility may, under uniform, nondiscriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its subscribers. If a subscriber's credit is impaired by his failure to pay for such service rendered, the utility may, after the reasonable notice specified in Rule 5 herein, unless there is dispute as to the amount of the bill, deny to him further telegraph or long distance telephone service until he pays the amount due and makes a deposit, not in excess of twice his average periodic bill for such service, to cover charges for future telegrams and long distance telephone messages."

RULE 17.

This rule now reads as follows:

> "In any case in which an applicant makes a payment to secure the construction of an extension by a water, gas, electric or telephone utility, such payment shall be considered as a loan to the utility, to be repaid under reasonable, nondiscriminatory rules and regulations. Interest shall be paid on such loans at the rate of 6 per cent per annum."

This rule is based on two fundamental principles:

1. In general, the utility itself should own the instrumentalities by means of which it renders service. There are, of course, exceptions to this general principle.

2. If the circumstances are such that it is reasonable to ask the applicant to loan to the utility the money or a portion thereof, with which to construct an extension, provision should be made for the repayment of the loan in such cases and in such amounts as may seem fair and reasonable. There are cases in which the revenue to be derived from the extension is not sufficient to justify the payment by the utility of interest on the loan. In such cases, interest should not be paid. In order to remove uncertainty in this respect, the last sentence of Rule 17 as it now stands should be eliminated, thus leaving the question of the payment of interest to be covered by the rules and regulations to be filed by the utilities in accordance with the general rule herein established.

Rule 17 should be modified to read as follows:

> "In cases in which applicants make payments to secure the construction of extensions by water, gas, electric or telephone utilities, such payments shall generally be considered as loans to the utilities, to be repaid, as soon as conditions warrant, under reasonable, nondiscriminatory rules and regulations."

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PART IV OF ORDER.

Part IV of the order now reads as follows:

> "Within thirty days after the effective date of this order, each water, gas, electric and telephone utility shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service and all deposits made to guarantee payment for metered or measured service by patrons who have paid all their bills promptly during the twelve months prior to the effective date of the order herein."

Some utilities have taken the position that it would be a hardship for them to be compelled to return at once in cash the deposits which they are directed to repay. To take care of these cases, we are willing to modify this paragraph by providing that the utilities may apply the existing deposits against current bills until the deposits are absorbed, subject to the provisions of Rule 10.

Part IV of the order should read as follows:

> "(*a*) Within thirty days after the effective date of this supplemental order each water, gas, electric and telephone utility shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service, and deposits made to guarantee payment for metered or measured service by customers who have paid all their bills promptly during the twelve months prior to the effective date of this supplemental order, and (*b*) within thirty days after demand, each water, gas, electric and telephone utility shall return all deposits made to guarantee payment for metered or measured service to customers who have paid all their bills promptly during the period of service in cases in which the service has lasted less than twelve months; *provided,* that such customers shall show ownership of the premises or shall offer guarantors satisfactory to the utility; except that if the utility so desires it may apply the existing deposit against current bills until the deposit is absorbed."

The foregoing matters are the only points urged in the petitions for rehearing requiring consideration.

By reason of the delay in the effective date of the order herein, due to the filing of the petitions for rehearing, it becomes necessary to change certain dates in the original order, as follows:

1. The new rules and regulations to be filed by the utilities should be filed within thirty days from the effective date of the supplemental order herein.

2. The effective date of the supplemental order herein should be December 1, 1915. Hence, by January 1, 1916, each water, gas, electric and telephone utility will have filed with this Commission new rules and regulations, if any rules and regulations now on file with the Commission are inconsistent with the general rules and regulations herein

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established, and will also have repaid the deposits ordered to be returned, unless the utility chooses to pay the deposits in service.

In view of the modifications herein made, we consider it unnecessary to grant a rehearing.

The supplemental order herein will be substituted for the order of August 12, 1915, and will express in complete and final form the rules and regulations established by the Commission in this proceeding.

SUPPLEMENTAL ORDER.

Each water, gas, electric and telephone utility doing business within this State having been served with notice of this proceeding, and opportunity having been accorded each such utility to appear and be heard, and evidence and argument having been received, and an opinion and order having been filed herein on August 12, 1915, and petitions for rehearing having been filed, and certain modifications being now made in said order,

It is hereby ordered that said petitions for rehearing be and the same are hereby denied.

And it is further ordered as follows:

PART I.

The following rules and regulations are hereby found to be just and reasonable rules and regulations, and are hereby established as rules and regulations to be obeyed and followed by all water, gas, electric and telephone utilities doing business within California:

I. SERVICE CHARGES.

A. Metered Service.

RULE 1.

A water, gas, electric or telephone utility may, under uniform, nondiscriminatory rules and regulations, require that an applicant for metered or measured service establish his credit before service is delivered, unless a prepayment device makes such procedure unnecessary. The applicant's credit will be deemed established if he (1) owns the premises; or (2) makes a cash deposit; or (3) furnishes a guarantor for the payment of his bills, satisfactory to the utility; or (4) has paid all his bills to the utility promptly during the twelve months prior to the effective date of the order herein.

RULE 2.

If an applicant for metered or measured service makes a cash deposit to insure payment for service to be delivered, the amount of the deposit shall be such as may be specified in the utility's rules, but in no event in

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excess of twice the average periodic bill of consumers of his class; *provided,* that the deposit for domestic or residence monthly service of water, gas, electric and telephone utilities shall not exceed $2.50, except that where the average of the monthly bills of those consumers of any class of domestic or residence service who make deposits is in excess of $2.00, such consumers may be called upon to make deposits of uniform amount not exceeding twice such average.

RULE 3.

If a consumer who has initially established his credit by showing that he is the owner of the premises, or by supplying a guarantor satisfactory to the utility, or by paying all his bills to the utility promptly during the twelve months prior to the effective date of the order herein, later fails to pay his bills, the utility may demand as guaranty for the payment of future bills a cash deposit in the amount provided by Rule 2; *provided,* that service may not be discontinued for failure to make such deposit until the time specified in Rule 5 hereinafter, notice of intention to discontinue service unless such demand is complied with.

RULE 4.

If a consumer who has made a cash deposit fails to pay a bill for metered service, the utility may apply the deposit in so far as necessary to liquidate the bill and may require that the deposit be restored to its original amount; *provided,* that service may not be discontinued until the deposit has been fully absorbed, and in no event until the expiration of the respective periods of time after notice of intention so to do, as specified in Rule 5, herein.

RULE 5.

A water, gas, electric or telephone utility may not, for failure to make a deposit, discontinue a metered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

RULE 6.

A water, gas, electric or telephone utility may not discontinue service by reason of nonpayment of bills for metered or measured service there-

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tofore delivered, in cases in which there is a dispute as to the amount of the bill. In case of such dispute, the consumer shall deposit with the Railroad Commission the amount claimed by the utility to be due, whereupon the Railroad Commission will investigate the facts and communicate its findings to the parties. Failure on the part of the consumer to make such deposit within fifteen days after demand by the utility that such deposit be made, shall warrant the utility in discontinuing the service.

RULE 7.

A telephone utility may, under uniform, nondiscriminatory rules and regulations, extend the convenience of sending telegrams and long distance telephone messages on credit to all its subscribers. If a subscriber's credit is impaired by his failure to pay for such service rendered, the utility may, after the reasonable notice specified in Rule 5 herein, unless there is dispute as to the amount of the bill, deny to him further telegraph or long distance telephone service until he pays the amount due and makes a deposit, not in excess of twice his average periodic bill for such service, to cover charges for future telegrams and long distance telephone messages.

B. Unmetered Service.

RULE 8.

A water, gas, electric or telephone utility delivering unmetered service at flat rates may, under uniform, nondiscriminatory rules and regulations, require payment in advance of delivery, for a period not to exceed that for which bills are regularly rendered as specified in the rate schedule, but may not demand guaranties to secure payment for service to be rendered in the future.

RULE 9.

A water, gas, electric or telephone utility may not for failure to pay for service, discontinue an unmetered service for which bills are normally made out monthly until the expiration of at least fifteen calendar days after written notice of intention so to do; nor where the bills are normally made out weekly until the expiration of at least four calendar days after written notice of intention so to do; nor where the bills are normally made out fortnightly until the expiration of at least seven calendar days after written notice of intention so to do; nor where the bills are normally made out for periods in excess of one month, until the expiration of at least thirty calendar days after written notice of intention so to do.

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C. Return of Deposits.

RULE 10.

After a cash deposit to guarantee payment for metered or measured service has stood unimpaired for twelve months, it shall be returned to the depositor. Upon closing any account the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor.

RULE 11.

Interest at the rate of 6 per cent per annum must be paid by each water, gas, electric or telephone utility on all deposits held by it to secure the payment of bills for metered service; *provided,* that interest need not be paid if the service is discontinued within less than twelve months from the date of first taking service.

D. Contracts.

RULE 12.

Except in the case of extensions in unincorporated territory, which matter is left open for consideration in subsequent proceedings, and of extensions in incorporated territory in cases in which the Commission may hereafter authorize the signing of contracts for service, a water, gas, electric or telephone utility may not require that an applicant sign a contract for service as a condition precedent to service; *provided,* that such utility may require that reasonable written application for service be made.

II. SERVICE CONNECTIONS.

RULE 13.

A water, gas, electric or telephone utility which operates upon, under or along any public street, highway, alley, lane or road shall at its own expense install a service connection of normal size to the property line or curb line of property abutting upon said public street, highway, alley, lane or road or to such point on the consumer's premises as the utility may agree upon. The term "service connection," as herein used, shall include water and gas pipes, electric and telephone wires, water, gas and electric meters, electric transformers, gas regulators, telephone instruments, and appurtenances. Subject to review by the Railroad Commission, a water, gas, electric or telephone utility may refuse to make a service connection if it believes that the service will not be used in the reasonably immediate future.

RULE 14.

Under reasonable, nondiscriminatory rules and regulations, to be prepared in the first instance by the utility, subject to review by the Railroad Commission, a water, gas, electric or telephone utility may provide

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that the cost of disconnecting and reconnecting service connections may be (1) charged directly to the new or the resuming consumer; or (2) distributed over the periodic payments over a reasonable period of time; or (3) merged in the general operating expenses. The so-called "cancellation charges" of water, gas, electric and telephone utilities are hereby abolished.

III. EXTENSIONS.

Rule 15.

A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; *provided,* that in any case in which the construction of an extension at the utility's sole cost will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

Rule 16.

A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; *provided,* that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission.

Rule 17.

In cases in which applicants make payments to secure the construction of extensions by water, gas, electric or telephone utilities, such payments shall generally be considered as loans to the utilities, to be repaid, as soon as conditions warrant, under reasonable, nondiscriminatory rules and regulations.

IV. MODIFICATIONS OF RULES.

Rule 18.

A water, gas, electric or telephone utility may establish uniform, nondiscriminatory rules more favorable to its consumers than the rules herein established.

Part II.

The rules and regulations herein established shall take precedence over orders heretofore made by the Commission in other proceedings, in so far as said orders may be inconsistent with said rules and regulations.

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PART III.

The rules and regulations herein established shall take precedence over all rules and regulations filed or to be filed by water, gas, electric and telephone utilities in so far as inconsistent therewith. Rules and regulations now on file and inconsistent with the rules and regulations herein established should be revised and refiled within thirty days from the effective date of this supplemental order.

PART IV.

(*a*) Within thirty days after the effective date of this supplemental order, each water, gas, electric and telephone utility shall return to the depositor all deposits heretofore made to guarantee payment for flat rate service, and deposits made to guarantee payment for metered or measured service by customers who have paid all their bills promptly during the twelve months prior to the effective date of this supplemental order, and (*b*) within thirty days after demand, each water, gas, electric and telephone utility shall return all deposits made to guarantee payment for metered or measured service to customers who have paid all their bills promptly during the period of service, in cases in which the service has lasted less than twelve months; *provided,* that such customers shall show ownership of the premises or shall offer guarantors satisfactory to the utility; except that if the utility so desires it may apply the existing deposit against current bills until the deposit is absorbed.

PART V.

If hardship results from the application to special facts of any rule or regulation herein prescribed, application may be made to the Railroad Commission for a modification.

PART VI.

This order shall become effective on December 1, 1915.

Dated at San Francisco, California, this 5th day of November, 1915.

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DECISION NO. 2880.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE SALE OF CERTAIN PROPERTIES.

Application No. 1645.

Decided November 6, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas, in Decision No. 2517, dated June 25, 1915, amended by Decision No. 2736, dated September 1, 1915, this Commission authorized Southern California Gas Company to sell a compressor station described in Exhibit "Z-3," and field gathering lines referred to in Exhibit "Z-2," said exhibits being attached to Application No. 1644, to Midway Gas Company, provided that Southern California Gas Company file with this Commission:

(*a*) An instrument showing the release of the property to be sold from the lien of its first mortgage;

(*b*) A copy of a receipt from the trustee under its first mortgage showing that said trustee has received $660,000.00 face value of first and refunding mortgage bonds of Midway Gas Company issued in payment for the property to be acquired from the Southern California Gas Company, and that said bonds are held subject to the lien of the first mortgage of the Southern California Gas Company;

(*c*) A copy of the instrument conveying to Midway Gas Company a title to the properties authorized to be transferred; and

Whereas, Southern California Gas Company has complied with the aforementioned conditions in that it has filed:

(*a*) A copy of an indenture dated September 2, 1915, marked Exhibit "D," and attached to this application, between the Equitable Trust Company of New York, trustee, and Southern California Gas Company, releasing from the lien of the first mortgage of Southern California Gas Company the property which said Southern California Gas Company has been authorized to sell and transfer to Midway Gas Company by Decision No. 2517, dated June 25, 1915;

(*b*) A copy of a receipt marked Exhibit "E," and attached to this application, signed by the Equitable Trust Company of New York, trustee, showing that it has received $660,000.00 face value of first and refunding mortgage bonds of Midway Gas Company, issued in payment for property acquired by Midway Gas Company from Southern California Gas Company, and that said

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$660,000.00 face value of first and refunding bonds are held by said trustee subject to the first mortgage of the Southern California Gas Company;

(c) A copy of an indenture dated December 1, 1914, marked Exhibit "F," and attached to this application, between Southern California Gas Company and Midway Gas Company, transferring to the latter company the title to the property, the sale of which was authorized by Decision No. 2517, dated June 25, 1915; and

Whereas, applicant requests a supplemental order in the above entitled matter finding the various instruments filed to be in compliance with the aforementioned conditions found in Decision No. 2517, dated June 25, 1915,

It is hereby ordered that this Commission find as a fact that Southern California Gas Company, by filing the aforesaid indentures and instruments, has complied with conditions Nos. 1, 2, 3, and 4 of the order of this Commission found in Decision No. 2517, dated June 25, 1915.

Dated at San Francisco, California, this 6th day of November, 1915.

DECISION No. 2881.

COTTAGE GROVE CONSUMERS ORGANIZATION

vs.

COTTAGE GROVE WATER COMPANY.

Case No. 826.

Decided November 6, 1915.

W. J. Fretwell, for Complainants.

Geo. W. Robinson, for Defendant.

REPORT OF THE COMMISSION.

This complaint was filed with the Commission on July 2, 1915, by certain residents of Cottage Grove, a subdivision suburban to the city of San Jose. Subsequently, Geo. W. Robinson, manager of Cottage Grove Water Company, filed Application No. 1776 before the Commission for an increase in rates for water served in Cottage Grove.

These two matters were consolidated at the hearing held on September 21, 1915. Inasmuch as the rates and service are so closely related

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in these two actions and certain matters complained of no longer exist, the Commission will cover the issues of the complaint in its decision and order on the rate Application No. 1776, reference to which is hereby made, and order that the present action be dismissed without prejudice to complainants.

ORDER.

Cottage Grove Consumers Organization having made complaint as to the service and equipment of the Cottage Grove Water Company, and a hearing having been held and it appearing that the matters complained of are remedied in part, and any complaints remaining being fully considered in the decision and opinion of this Commission in Application No. 1776, heard jointly with the case herewith, to which reference is hereby made,

It is hereby ordered that this complaint be dismissed without prejudice.

Dated at San Francisco, California, this 6th day of November, 1915.

DECISION No. 2882.

D. A. STEWART AND H. K. STEWART, A COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF STEWART BROS.

vs.

GREAT WESTERN POWER COMPANY.

Case No. 502.

Decided November 6, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainants having, on November 6, 1915, requested that this proceeding be dismissed,

It is hereby ordered that the complaint in this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 6th day of November, 1915.

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DECISION No. 2883.

IN THE MATTER OF THE APPLICATION OF GEO. W. ROBINSON, MANAGER OF COTTAGE GROVE WATER COMPANY, FOR AN INCREASE IN RATES FOR WATER.

Application No. 1776.

Decided November 6, 1915.

Applicant operates a small water system in the district known as Cottage Grove, adjacent to the city of San Jose. Under his present schedule of rates he contends that the system does not pay operating expenses and petitions the Commission to establish a higher schedule.

Held, That the present rates of applicant are non-compensatory. Following schedule established to become effective December 1, 1915: Flat rate, $1.50 per month, payable in advance; irrigation rate, 2½ mills per square yard per month; meter rates, $1.00 per month minimum for 600 cubic feet, 15 cents per 100 cubic feet for excess for next 800, 12 cents per 100 cubic feet for all over 1,400. Meters to be placed at the option of the company at its own expense or at the option of consumers provided they pay a deposit of $10.00 to be credited to bill at the rate of 50 cents per month.

Geo. W. Robinson, for Applicant.

W. T. Fretwell, for Protestants.

REPORT OF THE COMMISSION.

The Cottage Grove Water Company furnishes water to the residents of Cottage Grove, a subdivision suburban to the city of San Jose. There are some 125 taps attached to the distribution system and approximately 500 persons are served with water.

A complaint, under Case No. 826, was filed with the Commission prior to the filing of this application, but both the proceedings were consolidated at the hearing. The decision in Case No. 826 dismissed that complaint, as the matters involved were to be fully considered herein.

Geo. W. Robinson, as manager, has been operating this water utility for the past two years. The system, when taken over by him, was composed of a well and pumping plant with about two miles of mains; a tank having a capacity of 45,000 gallons, erected on a tower 60 feet high, and one piece of real estate. Since acquiring the property, applicant has had drilled a new well, but has otherwise made few changes.

The rates charged by applicant have generally been what Mr. Robinson considered fair after surveying the premises of the consumer. There are one or two rates at $3.00 and $4.00, but the average is about $1.25 per month.

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Applicant has asked for the establishment of a graded flat rate depending upon the size of the house, number of animals kept, and area irrigated, but leaving to the Commission the proper amount to be charged therefor.

During the months of June and July applicant had trouble with the old well, and before a new well could be drilled and placed in use, considerable dissatisfaction arose among certain of the consumers. After the new well was installed the old one was sand pumped and then returned to service.

Complainants produced two samples of water tending to show the impurity and unhealthfulness of the water furnished. The health officers had been requested to investigate the situation, but no action seems to have been taken by those authorities.

Certain of the consumers appeared for Mr. Robinson and testified that they were fully satisfied with the water and with the service rendered, and had made certain allowances for Mr. Robinson when they knew he was having trouble with his well.

There seems no doubt that some temporary inconvenience was caused the consumers when the trouble existed at the well, but the evidence as to present service shows that the objectionable conditions were remedied.

The absence of fire protection was brought up by complainants, but it was not shown that Mr. Robinson was receiving any return for fire service as such, nor that he is equipped to furnish fire service from the mains of his system.

The pressure throughout the district was found to be good during the hours when no sprinkling was going on. The extravagant use of water under the flat rate system has indirectly been the cause of many complaints of low pressure. The mains are small and, when consumers try to irrigate their lots at times when others want water, poor pressure results for every one. Sprinkling hours should be established in order to relieve that feature of the complaint.

The metering of the system would apparently cause many of the complaints to be withdrawn. Applicant testified that he had metered a few of the customers but that the meters soon were found out of order and never were repaired. We shall show, after an analysis of revenues and expenses of operating the system, that applicant is not receiving more than enough revenue to pay the operating expenses, and under the circumstances of this particular case the furnishing of meters by those desiring them is fully justified, following Rule 18, as outlined in our Case No. 683.

An examination of the books of the applicant was made by one of the Commission's hydraulic engineers. Vouchers for all of the recent

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capital expenditures were found. From the inventory prepared by the engineer for Mr. Robinson, a valuation was prepared by our hydraulic engineers, who found the reasonable cost new of the entire system to be about $9,100.00. The valuation submitted by applicant's engineer was about $9,850.00, but it was stipulated that whatever value the Commission decided upon would be accepted.

The annuity necessary to be set aside to provide for the renewal of the system was testified by applicant's engineer to be $290.00, and this sum appears reasonable to our engineers.

Interest at 7 per cent on $9,100.00, amounting to $637.00, together with $290.00 depreciation annuity, aggregate a fixed annual charge of $927.00.

The maintenance and operating expenses which our engineers found proper from the two years operation of the plant amounted to $3,048.60. Applicant's books showed $3,899.28, but certain items were excluded by our engineers, such as traveling expenses, interest payments, etc. Other expenses incurred during the past two years, and not likely to recur for some time, were amortized over a period of years. One half this two-year expense, or $1,524.30, would be the proper yearly charge.

We therefore find the following expenses attached to the operating of this water system:

Interest on investment of $9,100.00	$637 00
Depreciation annuity	290 00
M. and O. expense	1,524 30
Total	$2,451 30

The income from the rates has been:

September, 1913, to September, 1914	$1,524 60
September, 1914, to September, 1915	1,508 10
Average	$1,516 35

There is shown above a deficit of about $900.00 annually in the operation of the system. A difficult situation arises in considering this annual deficit as to how it shall be recognized, when we consider that the San Jose Water Company is serving adjacent territory inside the city of San Jose at approximately the same rates as the applicant herein is now charging.

We have therefore come to the conclusion that the system should be metered. No other remedy seems practical. By authorizing a flat rate of $1.50 per tap per month as a minimum and $1.00 per tap per month for those who will advance the necessary funds as a deposit towards installing their own meters, we will expect to find a considerable

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decrease in the operating expense, particularly the power bills, and also remove charges of discrimination. The average water consumption is now about 20,000 gallons per month, or three times the average generally found in similar communities.

Provision will be made for the return of the sums advanced by the consumers and a rate established for the metered use.

The analysis of the foregoing data in this opinion leads us to find as a fact that the rates heretofore collected by Cottage Grove Water Company in Cottage Grove have been non-compensatory, and that the following rates are reasonable and just and compensatory:

Flat Rates: $1.50 per month for water used for domestic purposes; 2½ mills per square yard for all irrigation use, such as gardens, fruit trees, etc.

Meter Rates: $1.00 per month minimum for 600 cubic feet or less; 15 cents per 100 cubic feet for the next 800 cubic feet; 12 cents per 100 cubic feet for all excess used over 1,400 cubic feet per month.

ORDER.

Cottage Grove Water Company having made application for permission to establish a new schedule of rates for water delivered in Cottage Grove, and a hearing having been held, and being fully advised in the premises, and basing our order on the foregoing opinion and findings of fact,

It is hereby ordered that Cottage Grove Water Company be authorized to establish the following schedule of rates:

Flat Rates: $1.50 per month for domestic use, payable in advance; 2½ mills per square yard per month for all irrigation use, such as gardens and fruit trees. This rate to be collected during each month of the year.

Meter Rates: $1.00 per month minimum for 600 cubic feet or less; 15 cents per 100 cubic feet excess for the next 800 cubic feet; 12 cents per 100 cubic feet for all excess used over 1,400 cubic feet per month.

Meters will be placed at the option of the Cottage Grove Water Company at their own expense; or at the option of the consumer in case the consumer is willing to deposit in advance $10.00 for a ⅝-inch meter, the deposit to be credited on water bills at the rate of 50 cents per month.

It is hereby ordered that sprinkling hours for those paying flat rates be confined between 6 and 8 a. m. and between 5 and 8 p. m.

It is hereby ordered that Cottage Grove Water Company submit within thirty days from the effective date of this order a complete schedule of rules and regulations governing the relations with the public.

It is hereby further ordered that the effective date of this order shall be December 1, 1915.

Dated at San Francisco, California, this 6th day of November, 1915.

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DECISION NO. 2884.

FRESNO TRAFFIC ASSOCIATION

vs.

SOUTHERN PACIFIC COMPANY ET AL.

Case No. 878.

Decided November 8, 1915.

Complainant, representing certain shippers in the city of Fresno, petitions the Commission to award it reparation on shipments of various commodities, contending that the rates charged thereon were in violation of the provisions of the long and short haul clause of the constitution, and that he is entitled to reparation in the sum of $207.76 with interest at 7 per cent.

Held, After investigation it appearing that the Commission heretofore granted carriers permission, pending further action, to continue deviations from the long and short haul clause, herein involved, complainant is not entitled to reparation, complaint dismissed.

M. K. Harris and *F. M. Hill*, for Complainant.

C. W. Durbrow, for Southern Pacific Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

In this complaint reparation is asked under the provisions of the Constitution of California and the Public Utilities Act for charging a greater sum for a short haul than for a long haul when both hauls are in the same direction and over the same rails.

The complaint alleges that certain shipments were made by certain business firms, members of the Fresno Traffic Association, complainant, over the rails of the defendant carriers from San Francisco to Fresno, upon which a rate, violative of the provisions of the long and short haul clause of the Constitution and of the Public Utilities Act, was charged and collected. These shipments are set forth in the complaint as follows:

On the 24th day of August, 1914, shipment by the Western Sugar Refining Company, San Francisco, via Southern Pacific Company to the San Joaquin Grocery Company, Fresno, California, of sugar weighing 55,550 pounds, on which the rate of 25 cents per hundred pounds was charged, total amounting to $138.88, whereas complainant claims rate of 22½ cents, being the rate from San Francisco to Los Angeles, should have been charged and collected.

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On the 30th day of March, 1914, shipment by the Western Sugar Refining Company, San Francisco, via Southern Pacific Company to the San Joaquin Grocery Company, Fresno, California, of sugar weighing 51,493 pounds, on which the rate of 25 cents per hundred pounds was charged, total amounting to $128.73, whereas complainant claims rate of 22½ cents, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 15th day of September, 1914, shipment by the A. S. Company, San Francisco, via The Atchison, Topeka and Santa Fe Railway Company to the San Joaquin Grocery Company, Fresno, California, of canned fish (sardines) weighing 40,880 pounds, on which the rate of 27½ cents per hundred pounds was charged, total amounting to $112.42, whereas complainant claims rate of 22½ cents, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 26th day of May, 1915, the Luchenbach Steamship Company delivered to the Southern Pacific Company at San Francisco, consigned to the Inland Iron Company at Fresno, California, a shipment of horseshoes and calks weighing 50,400 pounds, on which the rate of 31 cents per hundred pounds was charged, total amounting to $156.24, whereas complainant claims rate of 27½ cents, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 21st day of March, 1914, the Inland Iron Company, San Francisco, caused to be delivered to the Southern Pacific Company, consigned to the Inland Iron Company, Fresno, California, a shipment of angle, hoop and bar iron, weighing 84,400 pounds, on which the rate of 31 cents per hundred pounds was charged, total amounting to $261.64, whereas complainant claims rate of 27½ cents, being the rate from San Francisco to Los Angeles, should have been charged and collected.

On the 13th day of August, 1915, shipment by the Pacific Coast Steel Company, South San Francisco, via Southern Pacific Company to the Inland Iron Company at Fresno, California, of steel bars, weighing 70,870 pounds, on which the rate of 31 cents per hundred pounds was charged, total amounting to $219.70, whereas complainant claims the rate of 15 cents, being the rate from South San Francisco to Los Angeles, should have been charged and collected.

The complaint further alleges that the defendant carriers "have not been authorized by the Railroad Commission of the State of California, to charge less for the transportation of shipments of the character specified in the complainant's petition for a longer distance than for a shorter distance, and that said Railroad Commission has never, after investigation, authorized defendants by any order to charge less for transporting shipments over said longer distance than over said shorter distance, and has never, after investigation, granted any application

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of defendants, or either of them, to be relieved from the provisions of the Constitution of the State of California forbidding railroads to charge less for hauling shipments over longer than over shorter distances''; and prays for judgment against defendant carriers in the sum of $207.76 and for interest on each excessive charge alleged to have been made by defendants at the rate of 7 per cent from date of payment.

At the hearing it was agreed by counsel for defendant carriers that the statement of Mr. F. M. Hill, manager of complainant, would be accepted that the said shipments were made and that claims for reparation upon said shipments were assigned to complainant. The sole question, therefore, to be decided in this proceeding, is whether the carriers violated the provisions of the long and short haul clause of the Constitution and Public Utilities Act in assessing and collecting higher rates on said shipments between San Francisco and Fresno than the carriers collected on similar shipments between San Francisco and Los Angeles, or whether any action taken by the Railroad Commission of the State of California, hereinafter designated as the Commission, relieved the defendant carriers from the obligation of observing the long and short haul provisions on said shipments.

To set forth clearly the grounds upon which the decision in this case is based, a history of such action as has been taken by this Commission, with reference to the long and short haul clause, follows.

Section 21 of article XII of the Constitution of 1879 of this State contained a long and short haul clause. On October 10, 1911, this section was amended so as to provide that ''upon application to the Railroad Commission provided for in this constitution, such company may, *in special cases, after investigation,* be authorized by such commission to charge less for longer than for shorter distances for the transportation of persons or property.''

On October 26, 1911, the Commission served notice on all carriers to file with the Commission on or before January 2, 1912, a complete list of each rate or charge not in conformity with the long and short haul clause, in every case in which the carrier desired to continue to deviate from the long and short haul clause. This time was afterward extended to February 15, 1912.

Some of the carriers having filed their petitions for relief from the provisions of the long and short haul clause, the Commission, on January 2, 1912, held a hearing upon the petitions.

On February 15, 1912, the Commission issued an order authorizing the carriers to continue deviations from the long and short haul clause until the petitions had been finally passed upon by the Commission.

Previous to said order of February 15, 1912, an extended investigation was made by the rate department of the Commission, under the

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Commission's instructions and supervision, with reference to the deviations from the long and short haul clause, on the part of the carriers, including the defendants herein, as shown by said petitions.

The evidence in this proceeding shows clearly that the investigations thus conducted by the rate department were extended and exhaustive and that frequent conferences on this subject were held, as the investigation proceeded, between the Commission and its rate department, prior to the order of February 15, 1912. This investigation, as shown by the evidence herein, covered not merely the general subject but also was specifically directed to the individual deviations shown in the petitions of the carriers. The order of February 15, 1912, was based upon these investigations.

Complainant's claims in this proceeding are, accordingly, without merit.

As this Commission has, after investigation, authorized the carriers, pending the further order of the Commission, to continue the deviations from the long and short haul clause herein involved, and as the question of the violation of the long and short haul clause is the sole basis for the claim to reparation herein, the complaint should be dismissed.

I submit herewith the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the case having been submitted and being ready for decision,

It is hereby ordered that the complaint in the above entitled proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of November, 1915.

DECISION NO. 2885.

WILLIAM R. BOWKER

vs.

UNITED LIGHT, FUEL AND POWER COMPANY.

Case No. 883.

Decided November 9, 1915.

REPORT OF THE COMMISSION.

This complaint attacks as discriminatory the rate charged for electric energy supplied by United Light, Fuel and Power Company in the

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city of Coronado, San Diego County, in this State. The alleged discrimination is said to arise because the Consolidated Gas and Electric Company, an entirely different utility, charges a lesser rate for electric energy supplied in the city of San Diego than is charged by the defendant for electric energy sold in Coronado.

The defendant company has objected to the sufficiency of the complaint on the ground that the complaint does not state a cause of action. We believe that this objection is well taken. Obviously, it is impossible to show that one utility is discriminating because another utility is supplying the same commodity at a different rate in another community. The complaint accordingly must be dismissed.

ORDER.

After careful consideration, the Commission being of the opinion that the complaint herein fails to state a cause of action,

It is hereby ordered that the complaint herein be and the same is hereby dismissed.

Dated at San Francisco, California, this 9th day of November, 1915.

DECISION NO. 2886.

M. J. NOLAN

vs.

LOS ANGELES GAS AND ELECTRIC CORPORATION.

Case No. 846.

Decided November 9, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

This proceeding having been given careful consideration by the Commission, and the Commission being of the opinion that it has no jurisdiction to grant the relief requested in the complaint,

It is hereby ordered that this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 9th day of November, 1915.

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DECISION NO. 2887.

CRENSHAW SECURITY COMPANY

vs.

LOS ANGELES GAS AND ELECTRIC COMPANY.

Case No. 847.

Decided November 9, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

This proceeding having been given careful consideration by the Commission, and the Commission being of the opinion that it has no jurisdiction to grant the relief requested in the complaint,

It is hereby ordered that this proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 9th day of November, 1915.

Decisions Nos. 2888, 2889, 2890, grade crossings; not printed. See end of volume.

DECISION NO. 2891.

CITY OF KENNETT

vs.

KENNETT WATER COMPANY.

Case No. 715.

Decided November 9, 1915.

City of Kennett files this complaint petitioning the Commission to compel defendant water company to render better service for fire protection purposes, and the company agreeing to install a 6-inch main in place of the 4-inch main now in service along certain streets, which improvement was satisfactory to complainant, and the work now having been completed, complaint dismissed without prejudice.

Harry Donnelly, for Complainant.

Charles W. Slack, Chauncey S. Goodrich, and *Carr & Kennedy,* for Defendant.

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REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

The City of Kennett, hereinafter referred to as complainant, in its complaint recites that the Kennett Water Company, hereinafter referred to as defendant, is a corporation engaged as a public utility in the sale and distribution of water for domestic, fire protection and other purposes; that defendant has not and is not supplying water in sufficient quantity or at sufficient pressure to give adequate fire protection.

A hearing was had in this matter on April 22, 1915, at which it developed from the testimony of William T. Crocker, fire chief for the city, and other witnesses, that the 4-inch pipe line extending from the reservoir to the town was too small to supply the hydrants with a sufficient amount of water to maintain the pressure when the hydrants are in use. The remedy suggested by Mr. Crocker was the installation of an additional 6-inch pipe line from the reservoir to a point on Bush street and thence along Bush street to Kennett street. Subsequently, the Commission's engineers recommended this plan. The defendant, through its attorney, signified its willingness to construct the desired pipe line, and immediately proceeded to do so.

The City of Kennett has now informed this Commission that the proposed improvement has been completed and has asked that the complaint be dismissed.

I submit herewith the following form of order:

ORDER.

The City of Kennett having made complaint against the Kennett Water Company, alleging inadequate service for fire protection, and a public hearing having been conducted, and it appearing that subsequently defendant fully satisfied the complaint, and the complainant having asked that the proceeding be dismissed,

It is hereby ordered by the Railroad Commission of the State of California that the complaint of the City of Kennett against the Kennett Water Company be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of November, 1915.

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DECISION No. 2892.

IN THE MATTER OF THE APPLICATION OF UNION HOLLYWOOD WATER COMPANY AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF LOS ANGELES FOR AN ORDER AUTHORIZING THE LEASE OF PUBLIC UTILITY PROPERTY.

Application No. 1897.

Decided November 9, 1915.

Union Hollywood Water Company and City of Los Angeles apply for and are granted permission, the former to lease to the latter, its water system outside the limits of the city of Los Angeles at an annual rent of $1,000.00 per month, and a certain option, as amended, agreeing to sell such system to the city approved, provided that the city assume all obligations as to service now incumbent upon the water company and shall give adequate service to its consumers.

Richard J. Culver, for Union Hollywood Water Company.

W. B. Mathews, for City of Los Angeles.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

In Decision No. 2607, dated July 16, 1915, this Commission authorized Union Hollywood Water Company to lease, with option of purchase, that portion of its water plant located within the city of Los Angeles, subject to the terms and conditions set forth in a contract marked Exhibit "B" and attached to Application No. 1772. Said contract also gives the city of Los Angeles an option to purchase that portion of the plant of the Union Hollywood Water Company located outside of the city limits of Los Angeles for the sum of $38,000.00, plus the reasonable value of all renewals, improvements, additions (including services and meters), extensions and betterments subsequent to July 2, 1915.

In the application now before us, applicants ask this Commission to approve a supplemental agreement, marked Exhibit "A" and attached to this application, permitting Union Hollywood Water Company to lease to the city of Los Angeles that portion of its water plant located outside of the city limits of Los Angeles. The annual rental is fixed at $1,000.00 per month.

The supplemental agreement amends option II of the initial contract, marked Exhibit "B" and attached to Application No. 1772, by adding to the option price of $38,000.00 the sum of $1,810.00, representing the cost of improvements, additions and betterments subsequent to

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June 2, 1915, to that portion of the water plant of the Union Hollywood Water Company, which it now desires to lease to the city of Los Angeles; and the further sum of $10,672.46, representing the agreed value of an auto car truck, pipe, pipe line, fittings and materials on hand. The agreement further provides that the sum of $10,672.46, representing the cost of an auto car truck, pipe, pipe fittings and materials on hand shall be paid as follows: One half on or before September 10, 1915, and the remaining one half on or before October 10, 1915. Upon receiving payment, the water company agrees to give credit upon the said increased option price for the amount so paid and transfer the title to said auto car truck, pipe, pipe fittings and materials to the city of Los Angeles.

I find no objection to the transaction contemplated in the supplemental agreement marked Exhibit "A" and attached to this application, provided that the lessee will file with this Commission a stipulation that it will assume all the obligations of service from the leased system which at present rests upon Union Hollywood Water Company, and will give adequate and complete service to the consumers from this leased system, and that the existing rate should not be increased without authority of this Commission.

I accordingly recommend that this application be granted, and submit the following form of order:

ORDER.

This proceeding having come on regularly for a hearing, and the Commission being duly advised,

It is hereby ordered that Union Hollywood Water Company be and it is hereby authorized to lease and to sell its water system in accordance with the terms and conditions of that certain contract executed between Union Hollywood Water Company and the Board of Public Service Commissioners of the city of Los Angeles, copy of which contract is attached to this application in this proceeding and marked Exhibit "A," upon the following conditions, and not otherwise:

(*a*) This order shall not become effective until the city of Los Angeles shall have filed with this Commission a stipulation that it will assume all the obligations of service from the leased system which at present rest upon Union Hollywood Water Company, and will give adequate and complete service to the consumers from this leased system.

(*b*) This order shall not become effective until the city of Los Angeles shall have filed with this Commission a stipulation that the existing rates will not be increased without authority of this Commission.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 9th day of November, 1915.

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DECISION NO. 2893.

STANDARD LUMBER COMPANY

vs.

SOUTHERN PACIFIC COMPANY.

Case No. 806.

Decided November 9, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the proceeding entitled as above having, on November 8, 1915, made written request to the Railroad Commission that this case be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 9th day of November, 1915.

Decision No. 2894, grade crossing; not printed. See end of volume.

DECISION NO. 2895.

CITY OF SAN JOSE

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 818.

Decided November 11, 1915.

Complainant petitions the Commission to compel defendant gas company to extend its main along Willow street from Prospect street to the city limits, contending that there are sufficient prospective consumers along the proposed extension to warrant its construction, also that as the city intends to pave this street within a short time, the construction expense would then be considerably increased.

***Held,* After review of the estimated costs of such extension and the estimated receipts from prospective consumers, that though the revenue from this extension does not quite cover its pro rata of operating expenses and return upon the investment, the district is rapidly growing and will soon be on a paying basis, which, taken into consideration together with the increased cost of laying this pipe after the street has been paved, warrants the company in making the extension, which it is directed to do within a reasonable time.**

Earl Lamb, city attorney of San Jose, for Complainant.

C. P. Cutten and ***W. F. Vincent, Jr.,*** for Defendant.

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REPORT OF THE COMMISSION.

This is a proceeding by the City of San Jose against Pacific Gas and Electric Company, in which plaintiff prays for an order of this Commission directing the defendant company to extend its gas mains along Willow street in the city of San Jose from Prospect street westerly to the city limits.

The answer of defendant corporation admits the refusal of defendant to make the extension sought but denies that such refusal is unreasonable and alleges in effect that the investment required to make the extension would be approximately $4,838.00, and that the annual revenue that would be obtained therefrom would not exceed $360.00 per annum.

The matter came on regularly for hearing at San Jose, California, on September 21, 1915. Evidence was submitted by the plaintiff to the effect that proceedings to pave Willow street along the line of the proposed extension have been started and that it is the intention of the city to let contracts for the doing of that work as soon as the antecedent steps, required by the so-called Street Improvement Act, have been taken. The Commission's engineers introduced in evidence an estimate that there would be an additional cost of $1,757.67 in the making of the proposed extension if it were not made until after the paving of Willow street had been completed. This estimate was not questioned by defendant, whose superintendent testified that he estimated that the additional cost for making the extension after paving would be an advance of about 30 per cent.

Plaintiff introduced evidence to the effect that there are approximately forty houses along Willow street from the end of the present mains at Prospect street to the city limits near Bartlett avenue, and at least twenty-seven people along this extension would take service.

Defendant introduced evidence to the effect that nineteen persons along the proposed extension have signed applications for gas service.

Mr. Caldwell, superintendent of the "new business" department of the defendant company at San Jose, testified that it is the experience of the defendant company that in going into new territory people who have originally been against, or would not sign a contract to consume gas, afterwards became patrons of the company. Upon cross-examination of defendant's witnesses it appears that on an average the company served about 75 per cent of the houses along any street where gas mains are located.

From the foregoing testimony it seems reasonable to estimate that at least twenty-five consumers will be obtained along this extension within the near future, from which a revenue of $400.00 per annum should be obtained. The estimate of cost of the extension submitted

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by the defendant was $4,838.00. This, however, called for an extension of 6-inch cast iron pipe the entire length of Willow street from Prospect street to Delmas avenue, approximately 1,800 feet of which is outside the city limits.

It appears from the testimony of both witnesses for defendant and the Commission's engineers that the present consumers could be adequately served with a 4-inch main, in fact a 3-inch main could serve the present residents along Willow street who are likely to become consumers. An estimate of the cost of a 4-inch main along Willow street within the city limits, including service to twenty customers, made by the Commission's engineers, is $2,367.00. Defendant's estimate covering the same extension was $2,245.12. The Commission's engineers testified that only 60 per cent of the cost of a 4-inch main extension was properly chargeable to present consumers, which would make the total investment to be charged to those consumers $1,554.20, the remainder of the cost to be charged to additional consumers to be obtained along these extensions and to the improvement of the entire distributing system of the defendant company.

Further testimony was introduced to the effect that Willow street at present has a 10-minute car service, water service and sewerage connections, and when paved should develop very rapidly. Furthermore that there are at present along the line of the proposed extension thirty houses on cross streets within one block north or south of Willow street from which twenty-seven signatures have been received from petitioners for gas service. The matters involved in this case were originally taken up in Case No. 478 before this Commission, the complaint as to extensions in that case having been dismissed on account of lack of evidence. It was stipulated by counsel in this proceeding that the evidence introduced in Case No. 478 should be considered as a part of the evidence in this case. From the evidence in Case No. 478 it appears that the operating expenses of the defendant company, including maintenance and taxes for San Jose district, are approximately 61 per cent of the gross revenue. Applying the above ratio of expense to the anticipated revenue to be derived from the proposed extension there would be an amount equal to $156.00 per annum to cover interest and depreciation. Strictly speaking, this amount should be apportioned over the distributing and generating capital, out of which approximately 27 per cent is generating capital, leaving 73 per cent to cover fixed charges on this distribution investment. Capitalizing the result at 10 per cent, the total revenue would justify an investment of approximately $1,140.00 in distributing system.

On the assumption that the present applicants should bear the entire cost of a 4-inch main, which is admittedly larger than is necessary to

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serve their needs, it appears that there will be an investment of $1,217.00 upon which no amount will be earned to cover interest and depreciation. On the Commission's engineers' theory that only 60 per cent of the cost be charged to the present consumers, there would be an investment of $414.00 upon which no such return will be made. Assuming an interest and depreciation charge of 10 per cent per annum, the deficit on the local investment would be $121.70 on the first basis and $41.40 upon the theory that charges to the present consumers 60 per cent of the cost of installing the 4-inch main. On the other hand, it is apparent that by installing the pipes at the present time a saving of approximately $1,700.00 will be made. This saving seems sufficient to justify the investment being made at the present time, especially when it is considered that there is considerable probability of growth of business in the territory, that the defendant has a monopoly of the gas business in the city of San Jose and has a constitutional franchise to extend its gas mains on all streets. This privilege, as stated in previous decisions of the Commission, should carry the obligation to serve the consumers, although the local investment in specific extensions or localities does not appear in itself remunerative.

ORDER.

A public hearing having been held in the above entitled case, and each side having introduced evidence, and the case having been submitted and being now ready for decision, and the Commission finding that the directions hereinafter given are just and reasonable,

It is hereby ordered that Pacific Gas and Electric Company, a corporation, be and the same is hereby directed to extend its gas mains along Willow street in the city of San Jose from its present mains at Prospect street westerly to the city limits of San Jose, at its own expense, and thereafter to serve consumers therefrom at rates for gas in effect in the city of San Jose.

It is further ordered that said mains so ordered to be extended as aforesaid shall be of a size sufficient to serve any and all persons residing along Willow street between the points aforesaid.

And it is further ordered that if there is any apparently unreasonable delay in the execution of this order complainant may make further representation to this Commission.

Dated at San Francisco, California, this 11th day of November, 1915.

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DECISION No. 2896.

IN THE MATTER OF THE APPLICATION OF H. CLAY NEEDHAM FOR AUTHORITY TO MORTGAGE HIS WATER SYSTEM AT NEWHALL FOR THE SUM OF SIX THOUSAND FIVE HUNDRED DOLLARS.

Application No. 1937.

Decided November 11, 1915.

Applicant owns, individually, a small water system in Los Angeles County. Prior to the acquisition of such system he incurred a certain indebtedness, for which he now desires to issue a note secured by a mortgage upon his public utility property, and the Commission being unable to grant permission to mortgage utility property to secure an indebtedness not incurred for the benefit of such utility, application denied.

REPORT OF THE COMMISSION.

Applicant is the sole owner of an unincorporated water system at Newhall, Los Angeles County, installed in 1910 and 1911. The system consists of a flowing well south of town, an auxiliary well north of town with pump, two wood tanks, one of a capacity of 80,000 gallons and one of a capacity of 300,000 gallons, about ten acres of land used in connection with the wells and tanks, and about four miles of mains, consisting of 21,620 feet of 2-inch standard screw pipe, 19,301 feet of 4½-inch casing, and 12,072 feet of 5⅝-inch casing.

Applicant is indebted to his brother, Tim Needham, of Williamstown, Kentucky, in the sum of $6,500.00 for moneys advanced from time to time, the last advance being made about twenty years ago. The payment of this indebtedness is now secured by mortgage on certain real property owned by applicant, not connected with the water system, but as a matter of convenience in the handling and disposition of said real estate applicant desires to free it of encumbrances by encumbering the water system. He asks authority of this Commission to issue at note for $6,500.00, payable seven years after date, with simple interest at the rate of 7 per cent per annum, payable annually and secured by mortgage upon the said water system.

There are no liens at present on the system and the obligations of applicant incurred in connection with the construction and operations of said system at present unpaid do not exceed the sum of $150.00. The system is owned by him individually.

This application is governed by sections 51 and 52 of the Public Utilities Act. A reading of these sections, and a consideration of the purposes of the act, show its meaning to be that obligations incurred

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by a utility for its purposes may be refunded. The act does not permit this Commission to authorize the encumbrance of public utility property used and useful for serving the public, to secure the payment of a private individual debt of the owner of such property incurred for other purposes than those of the utility. The act authorizes the encumbrance of such a property only for specific purposes connected with the functions and activities of such properties when used in the public service.

The obligation proposed is not that of the utility. The present indebtedness was not incurred for its benefit or in connection with its acquisition, construction, extension or completion, nor for the improvement or maintenance of its service. It is only for purposes such as these that notes and securities may be authorized. It is such obligations of which we may under the act authorize the discharge or refunding.

ORDER.

For the lack of power to grant it, the application is hereby denied.

Dated at San Francisco, California, this 11th day of November, 1915.

DECISION No. 2897.

CLARA S. HOFF

vs.

GEORGE S. MONTGOMERY AND CARRIE JUDD MONTGOMERY, HIS WIFE.

Case No. 872.

Decided November 12, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled matter having made written request that the above entitled proceeding be dismissed,

It is hereby ordered that the same be and it is hereby dismissed.

Dated at San Francisco, California, this 12th day of November, 1915.

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Decision No. 2898.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO GAS COMPANY FOR PERMISSION TO SELL BONDS OF THE PAR VALUE OF FOUR HUNDRED THOUSAND DOLLARS AND TO EXECUTE A MORTGAGE OF ITS PROPERTIES.

Application No. 1907.

Decided November 13, 1915.

Applicant, operating gas distributing systems in Sacramento and Lodi, applies for permission to execute a mortgage covering its property to secure a bond issue of $1,500,000.00 6 per cent bonds and to issue and sell $400,000.00 of such bonds for the purposes of (1) taking up $200,000.00 bonds now outstanding; (2) to discharge notes in the aggregate amount of $101,400.00; (3) to pay interest due on bonds and notes totalling $6,650.00; (4) to reimburse treasury in the sum of $50,820.00; (5) for necessary extensions, $11,130.00.

Held. Applicant authorized to issue bonds as applied for, for the purposes as specified, with the exception of items covering interest due on bonds and notes which is not properly chargeable to capital. Bonds to be sold at not less than 92½ and the balance of proceeds other than that herein provided for shall be held in applicant's treasury and not devoted to any other purpose unless first approved by the Commission.

Devlin & Devlin, by *Robt. T. Devlin,* for Applicant.

Report of the Commission.

This is an application of the Sacramento Gas Company, hereinafter referred to as the gas company, for authority to create a bonded indebtedness of $1,500,000.00 of first mortgage 6 per cent serial gold bonds, and to issue and sell $400,000.00 of said bonds at not less than 92½ per cent of their face value; the proceeds of such sale to be used in taking up certain bonds and notes now outstanding, paying interest on the same, reimbursing the company's treasury for moneys expended from income, and providing for future additions and betterments.

Applicant was incorporated under the laws of the State of California in December, 1895, as the Sacramento Natural Gas Company. By court proceedings its name has since been changed to Sacramento Gas Company, for the reason that it now serves artificial as well as natural gas.

The gas company operates in the cities of Sacramento and Lodi, its principal place of business being located in the former city. It is a local corporation whose stock is owned principally by residents of Sacramento and Stockton. Its properties consist of 67 miles of mains in Sacramento and 8 miles of mains in Lodi, together with buildings, eleven parcels of real estate, nine gas wells, plant and machinery, gas

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holders, meters, tools and miscellaneous equipment. A valuation of the Sacramento property as of April, 1915, made for the company by Mr. A. R. Kelley, is as follows:

Estimated cost	$719,074
Estimated reproduction cost	883,128
Estimated reproduction cost, less depreciation	687,644

Applicant has an authorized capitalization of 10,000 shares of common stock of the par value of $50.00 per share, of which 8,582 shares are now issued and outstanding. Some of this stock was sold by the company at $65.00 per share and none of it was sold or disposed of at less than par. There is no preferred stock.

Applicant has no mortgages or incumbrances upon its property, with the exception of a deed of trust securing an issue of $400,000.00 of first mortgage 6 per cent thirty-year bonds. This deed of trust is dated October 2, 1911, and covers all the property owned by the gas company or thereafter acquired by it. Of these bonds $200,000.00 have been sold at prices ranging from 95 per cent of their face value to par, and the remaining $200,000.00 of bonds are pledged as collateral security for $100,000.00 of the company's promissory notes.

The gas company has prepared and submitted a draft of a deed of trust to be executed by it to Anglo-California Trust Company of San Francisco to secure the proposed new bond issue of $1,500,000.00 of first mortgage 6 per cent serial gold bonds, secured by all of the property which the company now owns or may hereafter acquire. These bonds are to be of the denominations of $1,000.00, $500.00, and $100.00 each, and are to mature serially as follows:

$5,000.00 face value each year from 1917 to 1921, inclusive.
$10,000.00 face value each year from 1922 to 1924, inclusive.
$15,000.00 face value each year from 1925 to 1939, inclusive.
The balance, or $1,220,000.00 face value, mature in 1940.

It is further provided that the company may redeem any or all of the bonds upon any interest date after sixty days notice at 103 and accrued interest.

The trust deed also provides for the immediate issuance of $400,000.00 of bonds for the company's present corporate needs and the subsequent issue of $1,100,000.00 of bonds from time to time in amounts not exceeding 75 per cent of the cost of actual and reasonable expenditures made by the company for permanent extensions and additions. It is provided, however, that no bonds shall be issued under this latter provision unless the net earnings of the company for a period of twelve consecutive months shall have been equal to at least 12 per cent of the face value of all bonds outstanding or applied for, and that no bonds shall be issued on account of expenditures in connection with the company's natural gas properties.

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It is further provided that none of the $1,100,000.00 of bonds reserved for future additions and betterments shall be issued until the company's aggregate expenditures for additions and betterments after August 1, 1915, shall equal at least $125,000.00.

A sinking fund is provided for the purpose of retiring the $1,220,000.00 of bonds maturing in 1940. By its terms the company is required to pay annually to the trustee (from 1916 to 1939, inclusive) 1½ per cent of the aggregate face value of any of the $1,100,000.00 of bonds above mentioned which shall have been theretofore certified and issued.

Among the other covenants subscribed to by the company is a provision by which the company agrees to maintain a supply of natural gas to its mains equal to at least one-half of the total volume of gas annually sold by it. If in any fiscal year the supply shall fall below such limit the company agrees to immediately commence the drilling of new wells until such limit shall have been reached and maintained. It is provided, however, that if the company shall at any time have expended $50,000.00 without obtaining a well capable of producing at least 50,000 cubic feet of gas in each twenty-four hours, its obligation to continue drilling shall cease.

In case of default 20 per cent of the bondholders may require the trustee to take action. The choice of remedies in all cases lies with the trustee. A majority of the bondholders may waive any default, except default in payment of principal of bonds at maturity.

In the present application the gas company asks authority to issue and sell the first $400,000.00 of bonds for the following purposes:

1. To take up 200 bonds of the original issue, dated October 2, 1911	$200,000
2. To pay coupons on said bonds	6,000
3. To take up 6 per cent notes as follows:	
Elizabeth Klebetz (due February 1, 1916)	7,000
Citizens Bank of Nevada City (due November 1, 1915)	5,000
Anglo-London Paris National Bank of San Francisco (due September 29, 1915)	67,000
Anglo-London Paris National Bank of San Francisco (due October 30, 1915)	10,000
Anglo-London Paris National Bank of San Francisco (due November 21, 1915)	11,000
4. To pay interest on above notes, approximately	650
5. To reimburse treasury for expenditures from income subsequent to April 2, 1913	50,820
6. To pay 6 per cent promissory note to California National Bank of Sacramento (due September 29, 1915)	1,400
7. To provide for immediate extensions	11,130
Total	$370,000

The evidence shows that the holders of all of the $200,000.00 of outstanding bonds will voluntarily sell their bonds to the gas company at the price which they originally paid for them and accrued interest,

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with the exception of the holders of five or eight bonds, who are demanding 105 and accrued interest, the redemption price of said bonds. The $100,000.00 of notes set forth under subdivision 3 are the renewals of notes previously authorized by this Commission under Decision No. 1246, and are properly chargeable to capital account.

As to the interest items set forth in subdivisions 2 and 4, amounting in all to $6.650.00, this Commission can not authorize the payment of this sum out of the proceeds of the sale of bonds and, accordingly, will deny the gas company's request for permission to use any part of the issue hereinafter authorized for this purpose.

As to the contention of the gas company to the effect that it had expended from its income more than $50,820.00 for the acquisition of property and for the construction, extension and improvement of its facilities and service since April 2, 1913, we are of the opinion that a final order authorizing the company to reimburse its treasury for such expenditures can not be made until the gas company has made a more complete showing in support of this portion of its application.

Mr. Jensen, the gas company's general manager, further testified that the proceeds of the 6 per cent promissory note to the California National Bank of Sacramento for $1,400.00, above referred to in subdivision 6, have been used for additions and betterments to the company's plant.

Applicant has filed a detailed statement as to the extensions which it proposes to make and which, according to its testimony, are reasonable and necessary to enable it to supply customers who now desire service, which extensions will cost the gas company more than $11,113.00.

An abstract of its income accounts for the nine months from January 1, 1915, to September 30, 1915, shows the following:

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Abstract of income accounts for nine months.

	January, 1915	February, 1915	March, 1915	April, 1915	May, 1915	June, 1915	July, 1915	August, 1915	September, 1915
Gas revenues	$11,684 25	$10,938 40	$9,969 45	$11,071 60	$10,718 95	$10,338 15	$8,850 00	$8,497 05	$9,652 95
Other revenues	87 37	127 86	95 23	121 30	147 28	244 47	100 36	139 39	124 61
Total revenues	$11,771 62	$11,066 26	$10,064 68	$11,192 90	$10,866 23	$10,582 62	$8,950 36	$8,636 44	$9,777 56
Production expense	$2,847 19	$2,163 65	$2,213 82	$2,277 64	$2,330 31	$1,462 99	$1,120 96	$1,160 57	$1,371 34
Distribution expense	602 41	533 08	564 66	589 87	584 04	776 71	949 62	541 72	554 27
Commercial expense	658 49	641 42	583 60	603 30	631 03	721 02	689 99	641 09	730 02
General expense (including depreciation, bond interest, etc.)	6,047 53	4,565 09	4,528 02	4,723 03	4,117 04	3,610 55	3,844 61	3,859 10	3,968 10
Total expense	$10,155 62	$7,903 24	$7,890 10	$8,193 84	$7,662 42	$6,571 27	$6,605 18	$6,202 48	$6,623 73
Balance to surplus	$1,616 00	$3,163 02	$2,174 58	$2,999 06	$3,203 81	$4,011 35	$2,345 18	$2,433 96	$3,153 83

TOTAL FOR NINE MONTHS, JANUARY TO SEPTEMBER, 1915.

Gas revenues	$91,720 80
Other revenues	1,187 87
Total revenues	$92,908 67
Production expense	$16,948 47
Distribution expense	5,696 38
Commercial expense	5,899 96
General expense (including depreciation, bond interest, etc.)	39,263 07
Total expense	$67,807 88
Balance to surplus	$25,100 79

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Applicant's general manager testified that for the years 1910 to 1913, inclusive, the gas company paid an annual dividend of 6 per cent upon its outstanding capital stock, and that for the year 1914 it paid a dividend of 4½ per cent. During the present year the company has paid two dividends of 1½ per cent each and has declared a third of like amount.

Pacific Gas and Electric Company also serves the city of Sacramento, and from the evidence submitted it appears that open competition prevails between the two companies and that in the neighborhood of 75 per cent of the gas company's mains in Sacramento are paralleled by those of the Pacific Gas and Electric Company.

The gas company on December 31, 1914, had 5,242 consumers in Sacramento and 331 in Lodi. In Sacramento it has a flat rate of $1.00 per 1,000 cubic feet, while its rates in Lodi run from $1.50 per 1,000 cubic feet to $1.25 per 1,000 cubic feet, according to the amount of gas consumed.

From the evidence it appears that applicant is operating under constitutional franchises in both Lodi and Sacramento; and that it also has a franchise from the city of Sacramento which it procured before the question of its right to constitutional franchise was definitely settled. This franchise originally provided for the payment of 3 per cent of the gas company's gross receipts to the city, but upon the company's disputing the city's right to collect this amount, a compromise was finally made by which the gas company paid to the city the sum of $4,500.00, and in return the city waived any rights it might have to the above named percentage.

From the estimates introduced at the hearing it appears that the company is being run at a low overhead cost and that its general manager and its secretary are both substantial stockholders in the company.

In selling the first $400,000.00 face value of its bonds, it is evident that the gas company will be selling all of those which mature prior to 1939, as well as $120,000.00 of bonds which mature in 1940. The officials of the company testified that they had been trying for two years to sell the remaining $200,000.00 of old bonds at 95 and that their present offer of 92½ for the first $400,000.00 of bonds under the proposed issue is the only offer they had received above 90.

If only the five bonds maturing in 1917 were to be sold at the price of 92½, the company would be paying approximately 10 per cent interest on the money received, but under the circumstances of this case where the $400,000.00 of bonds are to be sold in one parcel, we are

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naturally concerned only with the average interest upon the entire lot, which is approximately 7⅔ per cent. This means that the gas company will be paying an unusually high rate of interest upon this portion of its bond issue, but from the testimony introduced we are convinced that the gas company has been sincerely endeavoring to finance itself in a reasonably conservative manner and that this is the best arrangement it has been able to make. From the evidence it further appears that the company needs now, and will need from time to time in the future, considerable capital with which to make further extensions and improvements in its service in order to supply the reasonable requirements of both new and old customers, and its efforts to fund its present floating indebtedness should be encouraged so far as this Commission can consistently do so.

ORDER.

Sacramento Gas Company having applied to this Commission for authority to create a bonded indebtedness of $1,500,000.00 of first mortgage 6 per cent serial gold bonds and to issue and sell $400,000.00 of said bonds at not less than 92½ per cent of their face value, and a public hearing having been held upon said application, and the Commission finding that the purposes for which the proceeds of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Sacramento Gas Company be and it is hereby authorized to execute a deed of trust to Anglo-California Trust Company of San Francisco, substantially in the form of the proposed deed of trust filed with this Commission on the 8th day of November, 1915, and marked Exhibit "1."

It is further ordered that Sacramento Gas Company be granted authority and it is hereby granted authority to issue and sell under said deed of trust the first $400,000.00 of the bonds thereunder on the following conditions, and not otherwise, to wit:

1. Sacramento Gas Company shall sell said bonds so as to net said company not less than 92½ per cent of the par value of the principal thereof, in addition to accrued interest.

2. Sacramento Gas Company shall not sell any portion of said bonds separately, but shall sell the entire $400,000.00 of bonds as a whole, or else it shall have valid contracts of sale for all of said $400,000.00 of bonds before it actually issues and delivers any portion of them.

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3. The proceeds from the sale of said bonds shall be applied only as follows, and not otherwise:

(*a*) To take up and retire the 200 bonds of the company's original bond issue, dated October 2, 1911, not more than	$200,000
(*b*) To take up the company's notes to the following, and to retire all bonds securing said notes:	
Elizabeth Klebetz (due February 1, 1916)	7,000
Citizens Bank of Nevada City (due November 1, 1915)	5,000
Anglo-London Paris National Bank of San Francisco (due September 29, 1915)	67,000
Anglo-London Paris National Bank of San Francisco (due October 30, 1915)	10,000
Anglo-London Paris National Bank of San Francisco (due November 21, 1915)	11,000
California National Bank of Sacramento (due September 29, 1915)	1,400
(*c*) To provide for extensions, as set forth in the plans and maps filed with this Commission at the hearing	11,130
Total	$312,530

4. Sacramento Gas Company shall retain in its treasury the remaining $57,470.00 of the proceeds from the sale of said bonds (together with any money that it may be able to save under the allowance of $200,000.00 in buying back the 200 bonds under its original issue), and shall not expend the same or any part thereof except upon a further order of this Commission.

5. The approval herein given of said deed of trust or mortgage is for the purpose of this proceeding only, and approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage or deed of trust as to such other legal requirements to which said instrument may be subject.

6. Sacramento Gas Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued and sold, and on or before the twenty-fifth day of each month shall make verified reports to the Commission, stating the sale of said bonds during the previous month, the terms and conditions of such sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order in so far as applicable is made a part of this order.

7. The authority hereby given to issue and sell bonds shall apply only to bonds so issued and sold by the gas company on or before the 31st day of October, 1916.

8. This order shall not become effective until the fee prescribed by section 57 of the Public Utilities Act has been paid.

Dated at San Francisco, California, this 13th day of November, 1915.

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DECISION NO. 2899.

W. T. OGDEN ET AL.

vs.

PACIFIC GAS AND ELECTRIC COMPANY AND ORO WATER, LIGHT AND POWER COMPANY.

Case No. 668.

Decided November 13, 1915.

Complainants petition the Commission to compel defendant companies to serve them with an adequate supply of water for irrigation purposes. Investigation shows that Oro Water, Light and Power Company has already taken steps to remedy the complaint as regards that company, and such portion of the complaint dismissed. Pacific Gas and Electric Company contends that the water which it controls is necessary in the generation of electricity, and that it does not intend to serve water for irrigation purposes unless it has a supply in excess of that necessary to run the generating plant.

Held, That complainants have been receiving water from this ditch for a considerable number of years and have a prior right to such water, therefore defendant can not arbitrarily discontinue service to them. Defendant directed to continue serving complainants with water for irrigation and domestic purposes as it has in the past and to file with the Commission rules and regulations governing such distribution.

Edward Elliott, for Complainants.

Charles P. Cutten, for defendant, Pacific Gas and Electric Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

Complainants herein ask that defendants, Pacific Gas and Electric Company and Oro Water, Light and Power Company, be compelled by order of this Commission to produce and maintain a continuous and adequate water service in that territory in and around the town of Paradise, Butte County, California.

Defendant Oro Water, Light and Power Company, or its successors, own and operate a ditch called the Nickerson Ditch, but the evidence in this case shows that the principal cause of such complaints of service as have been made is the interference with the water supply of this company by a mining company. Since the filing of this complaint this defendant company has obtained an injunction against the mining company in the matter of the interference with this water, and therefore, it appears that this complaint should be dismissed as far as this company is concerned. If complaint is hereafter made of bad service the matter can then be considered.

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Defendant Pacific Gas and Electric Company contends that it is under no obligation to furnish water to complainants except at such times and in such amounts as it had water in excess of that required to generate electricity at what is called the De Sabla power plant.

The ditch serving the complainants, called Cherokee Ditch or Canal, runs from a point in another ditch which taps De Sabla Reservoir. De Sabla Reservoir is fed by still another ditch to the north. The water in De Sabla Reservoir is used largely for power purposes, and after running through the power house the water is turned into a ditch over which defendant has no control.

The testimony is that the Cherokee Ditch was first used for the purpose of conveying water for hydraulic mining. Apparently De Sabla Reservoir did not exist during the early mining days. Mr. W. P. Lynch, a witness for defendant, testified that in 1903 there was a small use of water from this ditch, principally for gardening, by settlers who owned adjacent land. About 1903, defendant acquired Cherokee Ditch.

William Hendrix testified that he owned property eighteen or nineteen years ago on which he received water from the Cherokee Ditch, that later he sold this property and later still repurchased it. He has last owned this property for about three years. It appears that J. Wilson was the purchaser of the land from Hendrix and receipts were produced showing that Wilson paid for water for the years 1900, 1901, 1902 and 1903. Hendrix testified that he paid Pacific Gas and Electric Company for water from the Cherokee Ditch used by him for irrigation after that company had presented to him a form of written contract and he had refused to sign it. He produced receipts dated June, 1913, July, 1913, and September, 1913, acknowledging receipt of money for water furnished during the year 1913 and signed Pacific Gas and Electric Company, per H. Warner.

Other witnesses testified that they had received water from this Cherokee Ditch for varying periods, but none of them for as long a time as Mr. Hendrix. Some of these witnesses did not pay for what water they received, in money, but worked on the ditch in cleaning it out, repairing it, etc.

In 1912 defendant, Pacific Gas and Electric Company, demanded of water consumers, or at least some of them, that a written contract be signed wherein it was provided that for the term of one year the consumer was to receive an amount of water not to exceed a maximum stated in the contract, the price for the water being fixed, and a provision being embodied permitting the defendant to discontinue delivering water whenever it should require the same for its own use.

Some of the consumers signed this contract and some refused to do so, but from the evidence it appears that the company did not dis-

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criminate in its delivery of water between those who had signed and those who had not. The testimony shows that during certain of the summer months, from 1912 on, the water supply delivered consumers from the Cherokee Ditch grew less and less until the summer of 1914, when for a considerable period no water was available in the Cherokee Ditch for the use of consumers. The defendant is entirely frank about this situation and declares that the reason for the shortage of water and the total lack of supply in 1914 was due to the fact that it needed all of the water in the De Sabla Reservoir for power making purposes. Acting under what it claims to be its legal right, it is plainly stated by defendant that there will be little, if any, water available for consumers in the Cherokee Ditch during certain of the summer months, because all water available for this ditch will be used to make power at the De Sabla Reservoir.

While it can not be definitely determined from the evidence the exact amount of water used by each consumer in times past, nor the exact times when such water was used, I believe a fair conclusion from all the evidence in this case to be that beginning approximately eighteen years ago consumers did use water for irrigation purposes from this Cherokee Ditch; that there has been a more or less continuous use of such water by at least some of these consumers ever since; that defendant acquired this Cherokee Ditch about 1903, and up to about 1914 continued the delivery of water to these consumers. However, defendant attempted in 1912 to persuade all of its water consumers to sign a contract, which has heretofore been mentioned, but only partially succeeded, and as to those who did not sign these contracts, delivery of water was apparently continued. Furthermore, it does appear that some compensation was paid defendant by water consumers either by way of cash payment or by work done on the ditch.

It follows as a matter of law that defendant was and is a public utility water company. Therefore, at least as to present consumers of water, the service of water must be continued and defendant has no right to stop their supply of water during the summer months merely because, in its judgment, this water may be used by it more profitably for other purposes. The contract upon which defendant partly relies, in my judgment, is not effective for the purpose of establishing the right of the company to discontinue service. Defendant, being a public utility company, any contract it has made or may make for the delivery of water is subject, of course, to the power of this Commission to fix rates and prescribe service. Therefore, it must be held that under the circumstances surrounding the making of these contracts, the clause which in terms sets out the right of the company to discontinue service is ineffective and can not be availed of by defendant as establishing a right.

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I believe, then, that the present consumers of water from the Cherokee Ditch are entitled to the amount of water which they have received and to a continuation of the service of this water during the summer months, and that defendant has no right to curtail or stop this supply. It being impossible to determine from the evidence so far adduced just what the supply heretofore given has been, I shall leave this determination open, so that if defendant cannot agree with its consumers upon the supply of water from the Cherokee Ditch which shall be furnished them, then application may be made to this Commission and proof submitted, whereupon the Commission will make an order setting out the amount of water to be delivered to each consumer.

I am not overlooking in this conclusion the fact that there may be use for all of the water available at De Sabla Reservoir for the purpose of developing power, but I do not believe it necessary in this case to attempt to determine what use this water shall be put to as between irrigation and power, as I believe the rights of the water consumers have been established and that these rights may not be interfered with even for the purpose of producing a power service to other consumers.

I shall recommend that the defendant, Pacific Gas and Electric Company, be ordered to file with this Commission within thirty days from the date of this order, rules and regulations governing the supply of water from the Cherokee Ditch to its consumers.

Herewith a form of order:

ORDER.

Complaint having been made against Pacific Gas and Electric Company and Oro Water, Light and Power Company, and a public hearing having been had and the matter being now before the Commission for determination,

It is hereby ordered that the complaint against Oro Water, Light and Power Company be and the same is hereby dismissed.

It is hereby found as a fact that Pacific Gas and Electric Company is a public utility water company distributing water for compensation from its Cherokee Ditch, in Butte County, to consumers for irrigation and domestic use.

Basing its order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that Pacific Gas and Electric Company continue to serve water from its Cherokee Ditch in Butte County to consumers, for irrigation and domestic use, and that in the event that said defendant and its consumers can not agree upon the times for such delivery and the amounts thereof, application may be made to the Commission, whereupon a supplemental order will be made determining the amounts of water to be delivered and the time thereof.

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Pacific Gas and Electric Company is hereby further ordered to file with this Commission, within thirty days from the date of this order, rules and regulations governing the supply of water to its consumers from said Cherokee Ditch.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of November, 1915.

DECISION No. 2900.

IN THE MATTER OF THE APPLICATION OF THE WESTERN UNION TELEGRAPH COMPANY FOR PERMISSION TO CLOSE ITS OFFICES AT BRIDGEVILLE, BLOCKSBURG, BELL SPRINGS AND LAYTONVILLE, CALIFORNIA, TO ENABLE SAID APPLICANT TO TAKE DOWN ITS ONE WIRE BETWEEN UKIAH AND EUREKA FROM THE HIGHWAY AND TO ERECT TWO WIRES BETWEEN UKIAH AND EUREKA ALONG THE NORTHWESTERN PACIFIC RAILROAD.

Application No. 1885.

Decided November 13, 1915.

Applicant applies for permission to abandon service at its offices in Bridgeville, Blocksburg, Bell Springs and Laytonville, and re-establish such line along the railroad right of way between Ukiah and Eureka, and it appearing that the business received from the four points mentioned does not warrant the continuance of agents at such points, and as they will still receive telegraph service through telephone connections, application granted.

REPORT OF THE COMMISSION.

Applicant seeks authority from the Railroad Commission to close four of its offices upon its line of telegraph connecting Ukiah, in Mendocino County, with Eureka, in Humboldt County. Its line is located along the highway. North from Willits the line lies to the west of the Northwestern Pacific Railroad until it reaches Alder Point, where it crosses the railroad to the east and continues on the east of the railroad until it reaches Alton, in Humboldt County, from which point north it follows the railroad.

Hearings were held at Laytonville and Blocksburg. From the testimony submitted it appears that applicant wishes to abandon its single wire along the highway and construct a two-wire line along the railroad, thus enabling it to give better service to Eureka, which has a population of about 12,000, and to furnish service to nine other towns along the railroad with an estimated population of 2,900, which are now without telegraphic service.

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The railroad line has been built in sections from Sausalito, on San Francisco Bay, northerly; and from Eureka, on Humboldt Bay, southerly. Various portions of the line have existed for a great many years, but it was not until the present year that the last connecting link of the line was built from Longvale north. Prior to that time a stage line connected Longvale, Laytonville and Bell Springs. There was also a stage line from Longvale through Blocksburg and Bridgeville to Carlotta. Both of these stage lines have now been abandoned.

The completion of the railroad has decreased the commercial importance of Laytonville and Blocksburg and has considerably reduced the population of each place and applicant's revenue at those offices. The population of Laytonville about a year ago was carefully estimated at 180. The population today is about 80. At Blocksburg the present population is about 35 adults and 12 children within a radius of three-quarters of a mile from the town hall. There are 110 registered voters in the precinct, being in a radius of about fifteen miles. The population was much greater before the stage service was discontinued and the railroad completed.

The average monthly revenue derived by applicant from its office at Laytonville for the year ending August 31, 1914, was $23.84, while its average monthly revenue for the year 1915 has been but $15.00. Practically all of applicant's business at the Laytonville office comes in over the telephone lines.

The average monthly revenue derived by applicant from its Blocksburg office was $17.49 for the year ending August 31, 1915, while its revenue for September was but $12.00. Half of this originated from business filed at the office in person or sent in by mail by ranchers living in a radius of about fifteen miles from the office. The other half originated from business received by applicant's office by telephone. The receipts of the Blocksburg office for the year ending August 31, 1915, were considerably higher than in previous years, because of the telegraph business incident to the construction of the remaining link of the railroad.

Owing to the abandonment of the stage lines and the completion of the railroad, the business and population of the territory reached by the wagon roads and applicant's present line, seems to be drifting to the railroad.

During the summer months the line from Willits to Alder Point is maintained by one lineman, and from Alder Point to Alton by a second lineman, while in the winter months it is necessary to have a third lineman to look after that portion of the line lying between Blocksburg and Bell Springs. These linemen are each telegraph operators and perform the bulk of the service of that character.

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At Laytonville there is an operator paid $15.00 per month, who is called upon to serve as operator from time to time to relieve the lineman. At Bridgeville and Bell Springs arrangements were made by which during the summer months operators would forward and receive messages for 25 per cent commission of the receipts of the office. At Bridgeville, however, the operator is now paid $5.00 per month.

The salaries and expenses of the linemen amount to an average of $117.00 per month at Bridgeville, $107.57 at Blocksburg, $102.00 at Bell Springs and $186.12 at Laytonville.

Laytonville is connected with Willits by the telephone lines of the Willits Telephone Company; and with Bell Springs by a mutual line. Subscribers upon these lines in the vicinity of Bell Springs and Laytonville may communicate by telephone with the office of applicant at Willits without payment of toll.

Laytonville and Bell Springs are also connected with Dos Rios, a town on the railroad, by a co-operative telephone system used by the ranchers of these communities without extra toll charges.

The rate received by applicant for transmitting messages from Laytonville to San Francisco is 30 cents for the first ten words and 2 cents for each additional word, and from Willits its rate is 25 cents for the first ten words and 2 cents for each additional word. The bulk of telegraph business at Bell Springs and Laytonville is communication with San Francisco. It is cheaper for telephone subscribers at Bell Springs and Laytonville to telephone their telegraph messages to Willits than to send them direct from applicant's offices at those points.

Blocksburg is connected with Fort Seward and Alder Point by telephone, regular subscribers being connected with these points without extra charge.

It is the custom in all these communities for subscribers to permit the free use of their telephones by non-subscribers.

At the hearings there were three documents presented and admitted in evidence, showing that the residents of the several communities were willing to have the service discontinued. The first was signed by forty persons, stating they had no objection to the discontinuance of telegraph service at Laytonville. These were stated to be every adult person within a radius of two miles of the town, except one. The one who declined to sign is a laborer who has not sent or received a telegram through that office during the last fifteen years.

The second was signed by thirty-six residents of Blocksburg and vicinity, stating that they have no objection to the discontinuance of telegraph service at Blocksburg.

The third bears one signature, that of the only family at Bell Springs, stating there is no objection to discontinuance of telegraph service at Bell Springs.

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The testimony was that each of these documents represent substantially all of the possible patrons of each of the several offices, with the single exception noted, and with that exception every person approached on the subject readily signed the document, although in many instances expressing regret that the town was to lose telegraph service, but expressing the feeling that the country in general could be better served along the railroad line, and that the communities in question could use the telephone service in connection with the telegraph along the railroad.

Bridgeville is connected with applicant's line at Fortuna by the lines of The Pacific Telephone and Telegraph Company. No showing was made as to the rate for telephone service. The published tariffs of the company, however, show the base rate to be 25 cents from Bridgeville to Fortuna and Eureka, and 40 cents from Bridgeville to San Francisco.

The country traversed by applicant's present line is very mountainous. The railroad from Willits to Alton follows the very narrow valley of the Eel River and its tributaries for most of the distance, there being little more than room for the passage of the river and the railroad between mountain ranges.

A line running through forests and mountains, and subject to the vicissitudes of storms, vandalism and falling trees, is more expensive to maintain than one located beside the railroad on the right of way, and it is desirable from the standpoint of applicant and its patrons that needless expense be avoided.

The principal business along the railroad apparent from a trip over the road is lumbering, cattle, shipment of tan bark, and summer tourist travel. These lines of business can probably be better served by a telegraph line along the railroad than one along the wagon road, and the population along the railroad is far greater than that along the wagon road.

Since the hearings applicant says it has arranged, subject to the approval of the Commission, to dispose of its lines in the vicinities mentioned, for use as telephone lines, so that these communities will have increased telephone facilities, besides the use of telegraph service with telephone extension without increase of present rates.

Separate application for authority to dispose of said lines should be filed. This application should be joined in by those intending to acquire the property, in accordance with the rules of the Commission.

In view of the increase of telegraph service to the public, the provision of telephone service in lieu of telegraph service at the points mentioned in the application, and the financial features of the situation, we think the application should be granted under the circumstances of this particular case. This action of the Commission, however, should not be considered a precedent in other cases.

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ORDER.

The Western Union Telegraph Company having applied to the Railroad Commission for permission to close its offices and abandon service at Bridgeville, Blocksburg, Bell Springs and Laytonville, that it may remove its line of poles and single wire supplying service to said places and erect a two-wire line along the right of way of the Northwestern Pacific Railroad between Ukiah and Eureka;

And hearings on said application having been held at Laytonville and Blocksburg, and it appearing that applicant intends to construct a two-wire line of telegraph along the railroad supplying telegraphic service to nine towns with an estimated population of 2,900, which now have no telegraphic service, and that it is for the public interest and convenience that said application be granted under the circumstances apparent in this case and upon the conditions hereinafter expressed,

It is hereby ordered that said four offices may be closed, service at said places may be abandoned and said line of poles and wires leading to said places may be removed.

This order is made upon the following conditions, to wit:

1. Before telegraphic service at said four places is abandoned, telephone service shall be established under such conditions that messages may be transmitted over applicant's line and with the aid of such telephone service to the said four places at rates not exceeding the rates now in effect to and from said places over applicant's line; such service where not already installed to be installed on or before February 1, 1916.

2. Applicant shall notify the Railroad Commission in writing within ten days after the establishment of such service of the fact thereof, with the names and addresses of the persons, firms or corporations furnishing such telephone service at each of said four places and with a general description of the nature of the service furnished.

Dated at San Francisco, California, this 13th day of November, 1915.

DECISION NO. 2901.

IN THE MATTER OF THE APPLICATION OF THE CITY OF TROPICO TO ESTABLISH ROAD CROSSINGS IN SAID CITY.

Application No. 2901.

Decided November 16, 1915.

Applicant desires to construct Brand boulevard across the right of way of Southern Pacific Company. Though this crossing is already being used by the public, an interlocking tower of the railroad company's extends a short distance across the street line, which the city desires the railroad to move at its own expense.

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This the railroad company refuses to do, though it does agree to make such change for the city at actual cost, and it appearing that such arrangement is just and equitable, applicant permitted to construct the crossing as applied for, provided that the railroad company shall move its tower, charging the expense thereof to applicant.

Henry P. Goodwin, city attorney, for Applicant.

George D. Squires, for Southern Pacific Company.

T. W. Watson, for city of Glendale.

REPORT OF THE COMMISSION.

This is an application by the City of Tropico, a municipal corporation of the sixth class, for authority to establish a crossing over the right of way and tracks of the Southern Pacific Company in said city, by Brand boulevard, at grade. It appears, however, from the application, that the principal question involved concerns the payment of the cost of removal to a different location of an interlocking tower now installed at said crossing.

A hearing was held at Tropico on November 5, 1915. The testimony showed that the right of way of the Southern Pacific Company is 100 feet wide, in the center of which its double track railroad is laid. These tracks form part of the main line of the system. All of the trains of the system running from Los Angeles to points north, both local and through trains, pass over this crossing. The right of way and tracks at this point extend in a northwesterly and southeasterly direction. The southeasterly line of the right of way is the common boundary line between the city of Tropico and the city of Los Angeles. Brand boulevard crosses said right of way at almost a right angle, extending northeasterly and southwesterly. It consists of two roadways, each 40 feet wide, lying on either side of the right of way of the Pacific Electric Railroad Company in the center of which is located the double track electric interurban railroad of that company. Both roadways of the boulevard are paved and curbed along that portion lying northeasterly of the right of way. No part of the right of way is paved. Southwesterly from the railroad right of way only the southeasterly roadway is paved in the vicinity of the railroad. The crossing is now being used by the public.

It was represented that the cities of Los Angeles, Tropico and Glendale desire to co-operate in completing the pavement of the boulevard and in making it still more a main artery of travel from Los Angeles by way of Allesandro street to the easterly portion of the San Fernando Valley, connecting Los Angeles with the cities of Tropico, Glendale, Casa Verdugo and to the east with Eagle Rock, Pasadena and other localities.

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The crossing of the steam road and the electric road is at present made safe by a system of interlocking switches, by means of which derailing devices prevent the approach of trains on either line to the crossing when the crossing is occupied by trains of the other line. The mechanism is operated by levers in the tower referred to. The tower consists of a two-story frame building, about ten or twelve feet square, standing to the easterly of the boulevard near the northeasterly rail of the Southern Pacific tracks and wholly upon its right of way. The southeasterly curb line and street line of Brand boulevard, if prolonged across the railroad right of way, would pass through the tower, which would project $\frac{8}{10}$ of a foot beyond the curb line into the roadway and about two or three feet southeasterly beyond the street line.

The city wishes to have the switch tower moved back to a point on the right of way adjoining the northeasterly line thereof, and lying southeasterly from the street line prolonged, leaving the proposed sidewalk and parking space clear of obstruction. It claims that the boulevard really extends across the right of way and that nearly all of the tower now stands in the street, and constitutes an obstruction to traffic which should be removed by the Southern Pacific Company. Its claim of title is based upon alleged adverse use by the public, but no evidence was submitted showing when the use by the public began, or its adverse character. Its counsel later stated that he was unable to prove that the ground where the tower now stands was ever used by the public for highway purposes. No evidence was offered tending to show the location on the ground of any highway crossing said tracks at any time in the vicinity of what is now Brand boulevard.

It was stipulated that the right of way of the Southern Pacific Company was acquired by it by deed from one Richardson, dated March 11, 1873; that it was part of a large ranch, that no roads crossed the ranch at or near the present crossing, and no roads or crossing rights were reserved in the deed.

It was also stipulated that the said electric road now owned and operated as part of the Pacific Electric Railway was built about 1904 by the Los Angeles Interurban Railway Company, and that the tower in question was erected by the Southern Pacific Company in 1902 at its sole cost, but that the said Interurban company thereafter paid the cost thereof, and that it has ever since been maintained and operated jointly by the two roads which it serves.

The contract of date May 24, 1904, for the crossing by the electric road, copy of which was submitted after the hearing, shows that the Interurban agreed to forthwith install said switch and signal system at its own sole cost, the expense of maintenance and operation to be borne jointly. The terms of the contract, however, do not affect the relations between either road and applicant.

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Pacific Electric Railway Company was not represented at the hearing, but has since stated that it waives its right to appear and will accept and be bound by Southern Pacific Company's position and will abide the Commission's order in the matter.

Southern Pacific Company offers to remove the tower to the location proposed, and also to dedicate as a part of Brand boulevard the two strips each 40 feet in width, extending across its right of way, which would lie within the lines of the two roadways of Brand boulevard if the lines thereof were prolonged across its right of way. It also offers to pave at its own expense between its tracks and rails and for a distance of two feet on either side thereof, and when the remainder of the boulevard is improved to pay without protest or obstruction of proceedings its assessed share of the cost of such improvement.

It has made an estimate of the cost of removing the tower to the proposed new location. The amount of this estimate is $685.00. It offers to do the work at actual cost if the city will pay said cost. The city wishes the company to pay the entire cost of the removal. All parties agree that the removal of the tower will be highly beneficial, in that it will not only permit the improvement of the southeasterly roadway by suitable pavement and sidewalk, but will also give all persons using the boulevard at or near said crossing a much better view of approaching trains and will make the crossing much safer than at present.

During the time that the tower is being removed the railroad companies propose to maintain a flagman at the crossing to make travel at that point safe. The crossing will be authorized. Under the circumstances here prescribed the city should pay for the removal of the tower.

ORDER.

City of Tropico, a municipal corporation of the sixth class, having applied to the Railroad Commission for authority to establish and construct at the present grade a crossing of the tracks and right of way of the Southern Pacific Company by Brand boulevard, a public street in said city, and to remove from said crossing the interlocking tower and other structures or devices which obstruct free travel for the full width of said street, and a public hearing having been had upon said application in the city of Tropico, and it appearing that the public convenience and necessity will be subserved by the establishment and construction of said crossing at grade,

It is hereby ordered that said application be and the same is hereby granted upon the following express conditions:

(1) Southern Pacific Company shall dedicate to public use, by suitable conveyance or map, an easement across its right of way and tracks over the land lying between the lines of the roadways of said

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Brand boulevard prolonged, but reserving to itself the right to construct, maintain and operate, repair and reconstruct present and future railroad tracks of various kinds across said street so conveyed.

(2) Southern Pacific Company shall remove the interlocking switch tower and appliances and devices used in connection therewith from their present location and erect and construct them at a point outside the lines of Brand boulevard prolonged across its said right of way, the entire actual cost of said removal and reconstruction to be paid for by applicant.

(3) The authority hereby given to remove and reconstruct said switch tower, devices and appliances used in connection therewith, shall be exercised and said work finished before February 1, 1916.

(4) Suitable precautions shall be taken by Southern Pacific Company and the Pacific Electric Company to insure the safety of the traveling public at said crossing during the time said tower, appliances and devices are being removed and reconstructed.

(5) Applicant shall report in writing to the Railroad Commission within ten days after the completion of said work the fact that the work has been completed satisfactorily.

(6) The Commission reserves the right to make such further orders in regard to this application as to it may appear to be right and proper, and to revoke its permission if in its opinion public convenience and necessity demand such action.

Dated at San Francisco, California, this 16th day of November, 1915.

DECISION NO. 2902.

IN THE MATTER OF THE APPLICATION OF PACIFIC ELECTRIC RAILWAY COMPANY FOR AUTHORITY TO ABANDON AND REMOVE ITS RAILROAD TRACK IN THE CITY OF LONG BEACH, ON THIRD STREET FROM THIRD STREET TO OCEAN AVENUE; AND ON OCEAN AVENUE FROM AMERICAN AVENUE TO MIRAMAR AVENUE, AND TO CONSTRUCT AND OPERATE, AT GRADE, IN LIEU THEREOF, A RAILROAD ON OLIVE AVENUE FROM THIRD STREET TO BROADWAY, THENCE EASTERLY ON BROADWAY OVER AND ALONG THE SOUTHERN PACIFIC TRACKS TO AND ACROSS ALAMITOS AVENUE TO A CONNECTION WITH PETITIONER'S THIRD STREET LINE IN SAID CITY.

Application No. 1541.

Decided November 16, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Whereas on May 5, 1915, the Commission rendered its opinion and made its order in the proceeding entitled as above, and

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Whereas on June 9, 1915, R. W. Jones filed an application for modification of the Commission's decision of May 5, 1915, and

Whereas on November 15, 1915, R. W. Jones and the Pacific Electric Railway, by their attorneys, filed a stipulation requesting that the petition for modification of the order of May 5, 1915, be dismissed,

It is hereby ordered that the same be and it hereby is dismissed.

Dated at San Francisco, California, this 16th day of November, 1915.

DECISION No. 2903.

IN THE MATTER OF THE APPLICATION OF HALF MOON BAY LIGHT AND POWER COMPANY FOR AN ORDER DIRECTING THE DISPOSITION OF CERTAIN SHARES OF STOCK.

Application No. 1936.

Decided November 16, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this application having been disposed of informally,

It is hereby ordered that this application be and the same is hereby dismissed.

Dated at San Francisco, California, this 16th day of November, 1915.

DECISION No. 2904.

IN THE MATTER OF THE APPLICATION OF THE GREAT WESTERN POWER COMPANY FOR AN ORDER PRELIMINARY TO THE ISSUE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE EXERCISE OF CERTAIN RIGHTS UNDER A FRANCHISE HEREAFTER TO BE GRANTED BY THE COUNTY OF CONTRA COSTA.

Application No. 1887.

Decided November 18, 1915.

Applicant applies for a certificate of public convenience and necessity permitting the exercise of certain franchise rights in the county of Contra Costa. The right which applicant desires to exercise at the present time is the construction of a transmission line a distance of approximately 2,500 feet to enable it to serve the plant of the Western Grain and Sugar Products Company, a company using a considerable amount of energy.

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This company is at present being served by the Pacific Gas and Electric Company at the same rate as is provided for in the contract between the sugar company and applicant and to construct the extension proposed would be merely to duplicate the existing facilities of the Pacific Company, which, taken into consideration with the fact that applicant does not hold itself out as willing to serve the general public of this locality but merely desires to secure certain of the larger and more profitable consumers;

***Held*, Application denied.**

Guy C. Earl and *Chaffee Hall*, for Great Western Power Company.

Charles P. Cutten, for Pacific Gas and Electric Company, Protestant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This is an application by the Great Western Power Company for an order preliminary to the issue of a certificate of public convenience and necessity to exercise a franchise to be obtained from the county of Contra Costa, in so far as it is necessary to serve one consumer, namely, the Western Grain and Sugar Products Company, located in the unincorporated territory of Contra Costa County, designated as Crockett.

At the hearing held on October 28, 1915, counsel for applicant requested that the application be amended to provide for a prayer for the final certificate of public convenience and necessity as the franchise had been obtained on October 4, 1915, and a copy of said franchise was filed, which request was granted. In its application the Great Western Power Company states in effect that through one, E. M. Downer, it obtained a franchise dated July 8, 1907, to construct, maintain and operate a transmission and distribution system upon all of the roads and public highways in the county of Contra Costa for a period of fifty years; that applicant has constructed many miles of transmission and distribution lines, but that under the franchise the construction was to be completed within three years, and as the three year period has elapsed it is necessary for applicant to obtain a new franchise, and under the provisions of section 50 of the Public Utilities Act obtain a certificate of public convenience and necessity to extend its lines. On June 9, 1913, applicant obtained a second franchise to construct and operate an electric transmission and distribution system on certain public highways of Contra Costa County, and on June 30, 1913, the Railroad Commission issued an order, Decision No. 759, granting applicant a certificate of public convenience and necessity to exercise said franchise with certain limitations.

The certificate did not embrace the territory to which applicant in this case petitions leave to serve, as the order granted a certificate for that territory only not then served by either the Pacific Gas and Electric Company or the Sierra and San Francisco Power Company.

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The applicant further states that it has for several years supplied energy in the unincorporated districts called Crolona and Crockett, that it has entered into a contract with the Western Grain and Sugar Products Company to furnish said electric energy and that to fulfill said contract will require the construction of a distribution line within Crockett and that said extension will be in territory already served by the applicant.

The Pacific Gas and Electric Company submitted at the hearing a formal protest against the granting of the certificate. In its protest it alleges that the protestant was serving the Port Costa Water Company at Crolona on March 23, 1912, and that subsequent thereto applicant extended its lines and supplied the water company without obtaining authorization from the Railroad Commission, and since then has not obtained same. It denies that the extension proposed is within territory already served or necessary in the ordinary course of applicant's business, and alleges that since October 1, 1910, it has served the Western Grain and Sugar Products Company under a contract which expired September 28, 1915. The protestant alleges further that it has offered, and still offers, the same schedule of rates as is contained in applicant's contract, and that no public necessity exists and that no public convenience will be served by the Great Western Power Company in extending its lines to serve the consumer in question.

It appears from the evidence that the Great Western Power Company served the Cowell Cement Works in Contra Costa County in 1909, and that in November, 1911, service was rendered the Carquinez Brick Company at Eckley, about one mile east of Crockett. Prior to March 23, 1912, applicant had no lines west of Eckley, but by June, 1912, an extension of its 22-kilovolt line was made through Valona and service rendered to the Port Costa Water Company at Valona.

The proposed service to the Western Grain and Sugar Products Company will require an extension of approximately 2,500 feet through the streets of Crolona and Crockett, which are unincorporated territory of Contra Costa County. The Western Grain and Sugar Products Company has, for the past five years, and is at the present time obtaining service from the Pacific Gas and Electric Company at 11,000 volts, and pays a rate of 1 cent per kilowatt hour.

The proposed extension of the applicant will be along streets now served by the Pacific Gas and Electric Company, and will therefore result in a duplication of lines.

The contract entered into by the applicant and the Western Grain and Sugar Products Company calls for service at 220–440 volts and at a rate commencing at 2½ cents per kilowatt hour. This rate is the same as filed by the Pacific Gas and Electric Company and which the latter company is ready and willing to serve at.

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Mr. Fenchon, representing the consumer, testified that there was no complaint regarding the service rendered by the Pacific Gas and Electric Company at its Crockett plant and it is admitted that the rates offered by the two companies are the same.

Considering the evidence in this case and the allegations made both by the applicant and protestant, it appears that on July 8, 1907, a franchise under the Broughton Act was issued to one, E. M. Downer, and transferred to the applicant to construct and maintain an electric system in the entire county of Contra Costa, with the limitation that the work should be completed within three years. From this it will appear that the right to extend had expired on July 8, 1910. The applicant, however, continued to construct lines as shown by the fact that in 1912 the line was built from Eckley west through the town of Valona, and service rendered to the Port Costa Water Company.

The second franchise was obtained on June 9, 1913, to serve certain portions of Contra Costa County, but a certificate of public convenience and necessity was obtained for that part, only, not then served by the Pacific Gas and Electric Company or the Sierra and San Francisco Power Company.

A third franchise was obtained on October 4, 1915, apparently for the specific purpose of serving the Western Grain and Sugar Products Company, as the applicant requests only the right to construct the one extension. Therefore it would appear that a period of five years has elapsed since the company, under its franchise, lost the right to extend its lines, and the applicant has not, since before the effective date of the Public Utilities Act, had a legal right to extend its system.

The fact that the applicant has only served a few isolated large power consumers in this general portion of Contra Costa County, would tend to show conclusively that it has not held itself out to serve the general public, but contents itself with taking the cream of the business. In this application it does not ask for the right to serve the district in general, but in reality to take a large consumer from a competing company. The neglect of applicant to take active steps to renew its rights of extension in this territory and the fact that it has not apparently attempted to serve the general public under its franchise, together with its request to serve the one consumer only, appears to me sufficient proof that it has not and is not now holding itself out to serve the entire territory and has not prosecuted the serving of the public with reasonable diligence.

Attorney for applicant contended that the only questions to be considered were whether or not the proposed extension is in territory already served by applicant, and whether or not applicant was operating in the territory prior to March 23, 1912. According to his own statement the franchise under which it was operating was obtained

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in 1907 and the right to extend its lines expired in three years, or presumably in 1910, from which time it would appear that the construction which the company made in this territory subsequent to 1910 was without a franchise, and the question therefore arises whether or not applicant had a legal right to construct and operate its lines in the territory west of Eckley. According to its own admission that it now requires a new franchise and a certificate of public convenience and necessity, it would appear that it had no legal right to serve in this territory subsequent to 1910, and that this service is not in territory which it lawfully served prior to March 23, 1912.

Under the circumstances I consider it necessary that applicant show that public convenience and necessity require its extension to serve the Western Grain and Sugar Products Company. It did not do this as is apparent from the fact, first, that the consumer is at present served, that the service is satisfactory and that the rates to be charged are the same as those proposed by the Pacific Gas and Electric Company, and second, that the applicant apparently does not ask to serve the general public.

From all the evidence in the case I find that the present or future public convenience and necessity do not require nor will require the construction, authority for which is prayed for in this application, and I therefore recommend that the application be denied and that the protestant in this case continue service as provided in the contract dated September 28, 1910, until such time as it has obtained formal authorization from the Commission to change said rates.

I submit the following form of order:

ORDER.

Great Western Power Company having made application to the Railroad Commission of the State of California for a certificate that public convenience and necessity require the construction of an electric distribution line to serve the Western Grain and Sugar Products Company in Crockett, Contra Costa County, California, and there appearing no good reason for the granting of such certificate,

It is hereby ordered that the application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of November, 1915.

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DECISION No. 2905.

IN THE MATTER OF THE APPLICATION OF FRANK P. CADY AND RILLA E. CADY FOR AN ORDER ESTABLISHING RATES FOR WATER FURNISHED TO THE INHABITANTS OF THE TOWN OF SUSANVILLE AND OF CONTIGUOUS TERRITORY.

Application No. 1848.

Decided November 18, 1915.

Applicants, operating a water distributing system in the town of Susanville, apply for a readjustment of its rates, contending that the present schedule of flat rates is extremely unsatisfactory, and also that it does not provide an adequate revenue, and an investigation showing that the present schedule of flat rates are more or less discriminatory, a new schedule established to become effective within thirty days and recommendation made that applicant meter its system as financial conditions permit. Applicant had heretofore entered into an agreement with the city to supply water for fire purposes free, the city agreeing to lay all mains to which fire hydrants were attached, but these mains having now been replaced by new ones and there being a number of hydrants in other portions of the city, a rate of $1.50 per hydrant per month on 4-inch mains and 25 cents per hydrant per month on smaller mains established.

J. E. Pardee and *J. A. Pardee*, for Applicants.

G. C. Julian, for the Town of Susanville and also for the County of Lassen.

A. H. Taylor, for the Susanville Grammar School District.

REPORT OF THE COMMISSION.

This is an application on behalf of Frank P. Cady and Rilla E. Cady for an order establishing rates for water furnished to the inhabitants of the town of Susanville and contiguous territory in Lassen County.

Applicants are the owners in common of the property commonly known as Susanville Water Works and are engaged in the business of selling water to consumers in Susanville and its immediate vicinity for domestic and commercial use and also for the irrigation of gardens and family orchards. Applicants are at present supplying water under flat rates fixed by an ordinance of the board of trustees of the town of Susanville.

The only evidence of the amount upon which interest should be allowed consists of applicants' annual reports and the appraisal by this Commission's hydraulic engineer, Mr. R. W. Hawley. The reports of applicants show a total of capital expenditure, which, according to their own admission, is in large part estimated.

The appraisal by Mr. Hawley is an estimate of the reproduction cost new of the property at the present time and totals $48,518.00. As

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pointed out by Mr. Hawley at the hearing, however, minor charges, due to items of property not included, would make a slight change in favor of applicants.

A considerable part of the plant was undoubtedly installed at greater expense than it would cost to install it at this time, it being necessary at the time of its installation to haul pipe and other materials by wagon some twenty-four miles. For instance, pipe listed in the appraisal above mentioned at 93 cents, according to the evidence, actually cost applicants $1.33 in 1911, immediately before the construction of the Southern Pacific line into Susanville.

The only criticism by the utility of Mr. Hawley's appraisal was that it did not perhaps include a sufficient amount for water rights, land and intangible features. The land consists of forty acres, upon which are located the springs known as "Big Springs," the source of applicants' water supply. The entire plant of applicants' predecessor, including this land, was purchased by applicants in 1884 for $11,500.00. Mr. Hawley testified that he had made an estimate of the value of all physical structures then in existence, and subtracting that estimated value from the above mentioned purchase price, found that the land, water rights and intangible property had actually cost applicants $3,665.00. The same items in the present estimated cost are listed at $4,240.00. Taking into consideration all of the evidence, we find that it will be fair and reasonable to allow applicants a return upon the sum of $50,000.00.

The maintenance and operation expense of applicants for the year 1913 amounted to $2,769.00 and for the year 1914 to $2,371.00. Installing of certain meters as hereinafter suggested will cause an increase in capital investment and also some slight increase in the expense of maintenance and operation, and we find that applicants' proper and reasonable operating expenses in the immediate future will be about $2,640.00 per year.

The evidence showed clearly that the flat rates now in effect are unsatisfactory to the consumers as well as to the applicants, and that they result, in numerous instances, in most inequitable charges. The flat rates now in effect do not differentiate between dwellings, whether they be of two rooms or ten, excepting that the monthly rate for a dwelling in which only one person resides is $1.00, whereas, for other dwellings it is $1.50. In addition the use of water outside of buildings, or for irrigation purposes, is $1.00 per city lot, or any portion thereof. These rates would impose the same burden upon the owner of a small cottage, with perhaps twenty square feet of garden or lawn, as upon the owner of a large house with ten or twenty times as much irrigated land surrounding it. In fact, the present rates are so inequitable that, as Mr. Frank P. Cady testified, in many instances he does not make any

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irrigation charge at all against small householders with small gardens or lawns, although he realizes that by the terms of the ordinance he is entitled and required to charge them $1.00 per month in addition to their residence rate.

Mr. A. H. Taylor, representing the Susanville Grammar School District, made a particular complaint against the flat rate charged for water furnished the grammar school building. The flat rate amounts to $17.00 per month, whereas the amount charged when the water was furnished through a meter was from $8.20 to $10.00 per month. From the evidence it appeared that the meter was removed subsequent to a decision of the Superior Court to the effect that according to the terms of the ordinance neither the utility nor the consumer could arrange for payment by the meter rate in any case where there was provision for collection by flat rates.

Mr. Taylor also testified that the school authorities wished to improve and beautify its grounds with trees and shrubs, but that it would be impossible for them to do so under the present rates, which would impose an additional burden of $14.00 per month, or a total of $31.00 per month for the building and the grounds.

We find that the present rate is excessive and have materially reduced it in the following order.

C. G. Julian, Esq., protested in behalf of the town of Susanville that of the nineteen fire hydrants at present installed eight are on mains of less than four inches in diameter, two being on three-inch mains and the remainder on two or two and one-half inch mains; and that the service through these mains is not adequate for fire protection purposes. This was admitted by applicants, as was also the contention of Mr. Taylor that at times there was no water in the second story of the grammar school, but applicants state that as soon as it is possible to acquire funds, mains will be increased in size so as to give to the school, and to practically all of the fire hydrants, proper service.

No serious complaints as to the quality of the water, its pressure or the adequacy of the service other than those above stated, were made.

At the hearing the question was raised as to whether or not the town should pay for its fire protection service. It appears that the town has been enjoying free fire protection service since 1884 under a contract made between applicants' predecessors and the fire commissioners of the town of Susanville, said contract being dated May 22, 1884. The contract contained, among others, a provision that in consideration of the promise of the said fire commissioners to purchase pipe, attach it to the reservoir of the water works and lay "pipe in connection therewith throughout said town," which the said owners of the water works should have the right to use in connection with serving the city with water, at all times except when needed for use in connection with a

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fire, the said owners of the water works, and their successors, did on their part agree to keep said pipe in good and sufficient repair and to furnish the said "fire commissioners, and their successors in office, free liberty and license to use said waters throughout said town at any and all times when fires are raging, free of charge."

There was some dispute as to exactly how much pipe was purchased and laid by the fire commissioners under this agreement, but apparently about 3,000 feet of six-inch riveted steel or iron pipe was so installed at the expense of the fire district. This pipe ran from the reservoir down Main street, but the pipe was never extended *throughout* the town, and a number of years ago it became fully depreciated and was replaced by new pipe, at the expense of applicants.

Of the nineteen fire hydrants at present installed in Susanville, only five are on the line which was originally served by the three thousand feet of pipe above referred to.

This Commission is, of course, not bound by contracts of this kind made prior to the passage of the Public Utilities Act, but even if it were so bound we find that in this case the fire commissioners did not fulfill the terms of their contract, in that they never attempted to lay mains *throughout* the town. For the money they actually expended they have received free fire protection for approximately thirty years, not only from the mains they laid, but from additional mains laid by applicants and applicants' predecessors; and they have received free service not only throughout the life of the mains which they laid, but for a number of years thereafter. We find that under all the circumstances the town is not now, either legally or equitably, entitled to free fire protection service.

On the other hand, we do not feel that the town should pay full rates for fire hydrants connected to mains where the service is not adequate, and for this reason, while we shall authorize a monthly charge of $1.50 for fire hydrants on four-inch mains and larger, we shall authorize a monthly charge of only 25 cents for fire hydrants on mains smaller than four inches.

We assume that this material difference in the charge allowed for adequate fire hydrant service as against inadequate service will induce the company to install four-inch mains as rapidly as feasible where needed for fire protection.

The proposed new schedule of flat rates will, we believe, provide annual returns of between $7,000.00 and $7,500.00, providing for maintenance and operation expenses, depreciation and 8 per cent interest upon the applicants' plant.

There was introduced in evidence Mr. Hawley's appraisal, in which he had carefully estimated the probable life of the various component

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parts of applicants' plant. Figuring the depreciation upon these various parts, upon a 6 per cent annuity basis, we find that a total sum of $460.00 per year should be allowed for this item.

While flat rates must of necessity be less equitable than meter rates, nevertheless, from the evidence introduced at the hearing, we realize that it would not be feasible for applicants to meter their entire system in the immediate future and, accordingly, we have authorized a new system of flat rates so as to do away as far as possible with the present serious discrepancies, and we are also establishing a meter rate subject to the provision that either the applicants may install a meter in any case where they feel that water is being wasted or that for any other reason they are not receiving adequate compensation, or the consumer may demand that a meter be installed by the applicants whenever he feels that the flat rate herein established is imposing an unjust burden upon him.

There is, of course, a considerable element of uncertainty as to what the returns will be in metering any part of an unmetered system, and the rates which we shall establish in the following order must be regarded as more or less experimental. It may be found necessary to change them somewhat after they have been tested by actual use for a year or so.

ORDER.

Frank P. Cady and Rilla E. Cady having applied to this Commission for an order establishing rates for water to be furnished to the inhabitants of the town of Susanville and contiguous territory in Lassen County, and a public hearing having been held, at which counsel appeared for the applicants and also for the town of Susanville and the county of Lassen, and an appearance having also been made in behalf of the Susanville Grammar School District, and evidence having been introduced by all the parties concerned, and the Commission being fully advised in the premises,

We hereby find as a fact:

(1) That a readjustment of the existing rates, resulting in the schedule of rates hereinafter specified, would distribute the charges among the consumers upon a more equitable basis than at present.

(2) That the rates herein established are just and reasonable.

Basing our conclusions upon the foregoing findings of fact and upon the further findings of fact contained in the opinion which precedes this order,

It is hereby ordered that Frank P. Cady and Rilla E. Cady be and they hereby are authorized, within thirty days from the date of service upon them of a copy of this opinion and order, to publish and file with

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this Commission and thereafter charge and collect from their consumers in the town of Susanville and the territory served by them adjacent thereto, the following rates, all of said flat rates being fixed upon a monthly basis, and all of said rates, whether flat or meter, to be payable monthly:

Monthly Flat Rates.

1. Apartment houses, boarding houses, lodging houses, hotels:	
(*a*) Dining rooms	$1 50
(*b*) Bedrooms, per room	15
2. Auto repair shops, blacksmith shops, printing offices, shoe shops, plumbing shops, undertaking parlors, photograph galleries, railroad stations, dental offices and theaters	1 50
3. Bakeries, bottling works, butcher shops, drug stores, public garages, slaughter houses, saloons and creameries	2 50
4. Bank offices, billiard parlors, fraternal halls, professional offices, stores and shops not otherwise listed	75
5. Barber shops, per chair	75
6. Breweries and laundries	5 00
7. Chop houses, cafés and restaurants, per unit of seating capacity	10
8. Livery stables and feed yards—	
Per average number of stock fed, each	20
Per average number of vehicles, each	20
9. Ice plant	7 00
10. School buildings	4 00
11. For county hospital, jail, courthouse and hall of records	15 00
12. The town of Susanville:	
(*a*) Fire department quarters	1 50
(*b*) Street sprinkling, per one hundred square feet	02
(*c*) Sewer flushing:	
(1) Automatic flushing tank, each	3 00
(2) By use of fire hydrants and hose, per hour	1 00
(*d*) Fire hydrants:	
(1) Fire service minimum	18 50
(2) Hydrants on mains 4-inch and larger, each	1 50
(3) Hydrants on mains smaller than 4-inch, each	25
13. Residence rates, for four rooms and less	75
For each additional room	10
14. Private garages provided with water tap	50
15. Private barns with not more than two horses or cows	50
Additional animals, each	15
16. Auxiliary uses:	
(*a*) Steam engines, per horsepower	10
(*b*) Soda fountains and ice cream parlors	1 50
(*c*) Public bath tubs (barber shops, hotels, etc.,) each	1 50
(*d*) Private bath tubs	20
(*e*) Public and semi-public toilets and urinals, each	50
(*f*) Private toilets	10
(*g*) Irrigation of lawns, shrubbery and gardens, private or public, per 100 square feet (nearest measure)	02
(*h*) Steam heating plants	2 00
(*i*) Refrigerating plants	2 00
(*j*) Public drinking fountains	1 50
(*k*) Public watering troughs	2 50

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Meter Rates.

Monthly minimum for any use	$1 00
For use between 0 and 1,000 cubic feet per month	20 cents per 100 cubic feet
For use between 1,000 and 2,000 cubic feet per month	15 cents per 100 cubic feet
For all use above 2,000 cubic feet per month, except as hereinafter set forth	10 cents per 100 cubic feet
All use above 2,000 cubic feet per month for irrigation purposes	5 cents per 100 cubic feet

And it is hereby further ordered that meters may in any case be installed, and the meter rate thereupon be applied, at the option of applicants; or a meter shall be installed and the meter rates similarly applied for the service of any consumer demanding the same.

Dated at San Francisco, California, this 18th day of November, 1915.

DECISION NO. 2906.

J. R. GORDON

vs.

PACIFIC LIGHT AND POWER COMPANY.

Case No. 543.

Decided November 18, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant in the above entitled case having, on November 12, 1915, made written request to this Commission that the above entitled case be dismissed,

It is hereby ordered that the above entitled case be and the same is hereby dismissed.

Dated at San Francisco, California, this 18th day of November, 1915.

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Decision No. 2907.

IN THE MATTER OF THE APPLICATION OF THE OCEAN SHORE RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE THE OPERATION OF TWO PASSENGER TRAINS.

Application No. 1928.

Decided November 18, 1915.

Ocean Shore Railroad Company applies for permission to discontinue the operation of trains Nos. 4 and 5, contending that winter traffic does not produce sufficient revenues to pay operating expenses thereof, and it appearing that applicant is already operating under a considerable yearly deficit, and that whatever inconvenience is caused by the elimination of this train is more to be desired than an entire interruption of service, application granted.

I. N. Randall, for Applicant.

F. M. Olschenski, for Protestants.

Report of the Commission.

Gordon, *Commissioner.*

This is an application of the Ocean Shore Railroad Company for permission to discontinue the operation of two passenger trains, which have heretofore been operated on the following schedule:

Train No. 4.	*Train No. 5.*
Leave 7.00 a.m., Arleta	4.40 p.m., arrive
Arrive 8.40 a.m., San Francisco	3.00 p.m., leave

It is alleged that the continued operation of these trains throughout the winter season would result in a considerable loss to the applicant, and that such loss can not be sustained in view of the applicant's present financial condition. It is further alleged that the schedule of trains proposed to be operated during the winter months provides ample service for the patrons of the applicant during the winter season, such proposed schedule being substantially as follows:

	Train 2	Train 4		Train 1	Train 3	
Leave	----------	2.00 p.m.	Tunitas	11.05 a.m.	----------	Arrive
Leave	5.55 a.m.	----------	Arleta	----------	7.10 p.m.	Arrive
Arrive	7.35 a.m.	4.15 p.m.	San Francisco	9.00 a.m.	5.30 p.m.	Leave

A public hearing was held at San Francisco on November 4, 1915, and the matter is now ready for decision.

The applicant introduced in evidence statements showing the revenue derived from its trains Nos. 4 and 5 for the period of each year com-

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prised in the months of November, December, January, February and March, these statements containing the following data:

	Year 1913-14		Year 1914-15	
	Train 4	Train 5	Train 4	Train 5
Total passengers carried	4,007	2,657	4,146	3,019
Daily average	30.9	25.3	30.9	27.6
Total earnings	$1,494 49	$1,163 00	$1,560 92	$1,334 83
Daily average	11 50	11 08	11 65	12 25

The applicant also introduced figures showing the operating cost of each of trains 4 and 5, which indicate that the cost per trip of train 4 is $10.34 and of train 5, $9.83. These figures do not include any allowance for upkeep of track and roadbed, maintenance of equipment, station and office expense, overhead expense, taxes, interest or depreciation. The applicant further placed in evidence a statement showing its financial condition and which indicates for the eight months period ending August 31, 1915, a net corporate loss amounting to $68,258.60. It is evident that the operation of the Ocean Shore Railroad is attended with a continued financial loss and such loss has thus far been met by assessments which have been levied on the stockholders, the fifth assessment having been called and being now in process of collection.

The protestants introduced testimony as to the inconvenience that would result to them if the withdrawal of the train due to arrive at San Francisco at 8.40 a.m. were to be permitted and stated that the service offered by the train due to arrive at San Francisco at 7.35 a.m. would work an undue hardship, in that the hour of leaving Arleta (5.55 a.m.) and the intervening stations was unreasonable. Various suggestions were made by interested protestants as to methods by which the continuance of train No. 4 could be accomplished, among them the possibility of the purchasing of a gasoline motor car. The present financial condition of the applicant is not such that the purchase of additional equipment could be contemplated at this time. Considerable comment was made as to the administrative expense of the applicant, and with especial reference to the compensation paid to the operating and executive officials of the company. A careful analysis of the items charged to "Administrative Expense" does not indicate that such charges are excessive, in fact they are less than are being charged to such account by other lines whose operation is similar and comparable to that of the applicant, and it is not found that the statement of the protestants that excessive amounts are being paid to officials is justified by the facts as reflected by sworn statements filed with this Commission.

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This application presents two features, one the desire of a carrier to reduce its train service during a period when the travel does not justify the cost of operation, the other the desire of the commuters to enjoy the train service which the applicant seeks to withdraw. The application is evidently made with a view of endeavoring to eliminate some of the continued losses with which the Ocean Shore Railroad Company has had to contend, and is in line with a sincere endeavor to conserve the property by eliminating any unnecessary expense or unproductive service. I am of the opinion that the residents who are patrons of the applicant's trains which are sought to be withdrawn would prefer that the trains be eliminated at this time, rather than face an entire suspension of all service on the line of this railroad.

After careful consideration of all the facts presented in connection with this application, I am of the opinion that it would be unreasonable to require the operation of trains Nos. 4 and 5 during the coming winter season.

I recommend that the application be granted and submit the following form of order:

ORDER.

Ocean Shore Railroad Company having made application to this Commission to discontinue the operation of two passenger trains, one arriving at San Francisco at 8.40 a.m. daily, one departing from San Francisco at 3.00 p.m. daily; a public hearing having been held, and the Commission being fully advised in the premises,

It is hereby ordered that the application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of November, 1915.

DECISION No. 2908.

IN THE MATTER OF THE APPLICATION OF JOHN T. GAFFEY TO INCREASE RATES FOR WATER SERVICE IN PALO VERDES RANCH, LOS ANGELES COUNTY.

Application No. 1650.

Decided November 19, 1915.

Applicant, operating a small water company adjacent to the district known as San Pedro, applies for permission to increase his rates for water approximately 75 per cent, and it appearing that this system, originally constructed for the

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purpose of promoting real estate sales, is considerably overbuilt and that applicant is not entitled to a return upon its full value, schedule established embodying slight increases to become effective within thirty days.

John T. Gaffey, in propria persona.

A. W. Redman, for Harbor View Land Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

This is an application for permission to increase rates charged for water.

Applicant owns and operates a water distributing system in the territory known as Palo Verdes Ranch, Los Angeles County, just outside the incorporated limits of the city of Los Angeles at San Pedro. There are 58 consumers supplied by this system, three of whom have measured service.

The schedule of rates in effect are those fixed by Ordinance No. 38 of the city of San Pedro. A résumé of these follows:

For every tenement or dwelling house occupied by a single family of five persons or less, including water for sprinkling lawn, not exceeding 25 by 50 feet in size, per month	$1 50
Same, with family of six persons or more, per month	2 00

Meter Rates.

1,000 cubic feet or less, per month	$1 50
Next 2,000 cubic feet, per 100 cubic feet	15
Next 1,000 cubic feet, per 100 cubic feet	14
Next 1,000 cubic feet, per 100 cubic feet	12
Above 5,000 cubic feet, per 100 cubic feet	10

As Palo Verdes Ranch and Harbor View Land Company's tract are sparsely settled communities with a water system extending over the entire tract, it becomes necessary to determine what part of this plant shall be charged against present consumers, for it can not be held that the burden of an entire utility system should be borne by existing consumers without regard to the fact that such system may be largely overbuilt.

Here we find that these tracts were laid out by the Harbor View Land Company and Gaffey and the water system installed as an aid for their real estate venture. From time to time people purchased lots and built houses thereon and became consumers of this water system, so that at the present time a relatively small part of the system is used.

Purchasers have been allowed to select lots in any portion of the tracts, with the result that the lots occupied are widely scattered. This situation was brought about by Gaffey, who subdivided the land and put in this water system and now owns the same, and I think that a considerable portion of the burden should be borne by him.

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The gross revenue for 1914 was $1,558.00. Additional consumers have been added and the Commission's engineers estimate $1,775.00 as the income for the present year. The rates set out in the order following this opinion are estimated to produce approximately $1,900.00 per annum.

This will result in an increased revenue to applicant which I think is justified, but I do not think the increase of 75 per cent asked for should be allowed.

The meter rates set out in the subjoined order are such as the Commission has established for many small water plants in southern California operating under conditions similar to the one here being considered. The meter rates recommended are those set out in Ordinance No. 38 of the city of San Pedro.

I submit herewith the following form of order:

ORDER.

Application having been made by John T. Gaffey for permission to increase the rates charged by him to consumers for water, and a public hearing having been had, and the matter having been submitted,

It is hereby found as a fact by the Railroad Commission of the State of California that the present rates being charged by John T. Gaffey for water delivered to consumers in what are known as Palo Verdes Ranch and Harbor View Land Company Tract, in so far as they differ from the schedule of rates herein found reasonable, are unreasonable, and that the rates set out in the following order are just and reasonable rates to be charged for water delivered to consumers.

Basing its order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that John T. Gaffey is hereby authorized to put into effect, within thirty days from the date of this order, the following schedule of rates to be charged for water in what are known as Palo Verdes Ranch and Harbor View Land Company Tract:

Flat rates set out in Ordinance No. 38 of the city of San Pedro:

Meter Rates.

Minimum 600 cubic feet	$1 25 per month
Next 400 cubic feet	20 per 100 cubic feet
Next 2000 cubic feet	15 per 100 cubic feet
Above 3000 cubic feet	10 per 100 cubic feet

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of November, 1915.

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DECISION No. 2909.

THE CABRILLO CLUB ET AL.

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

Case No. 796.

Decided November 19, 1915.

REPORT OF THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

We have given careful consideration to defendant's petition for rehearing herein, and have also considered the offer of defendant to produce further testimony on certain points mentioned in the petition for rehearing, and find no reason for changing the opinion and order heretofore rendered in the above entitled proceeding. We believe that with the evidence which defendant suggests it would introduce if a rehearing were granted our previous opinion and order herein made would not be changed or modified.

The petition for rehearing should be denied.

ORDER.

The Atchison, Topeka and Santa Fe Railway Company, a corporation, having filed a petition for rehearing in the above entitled proceeding, and careful consideration having been given thereto, and no good reason appearing why such petition should be granted,

It is hereby ordered that said petition for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 19th day of November, 1915.

DECISION No. 2910.

IN THE MATTER OF THE APPLICATION OF CALIFORNIA SOUTHERN RAILROAD COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK AND BONDS.

Application No. 1790.

Decided November 19, 1915.

Applicant, intending the construction of a railway from Blythe to a connection with the Santa Fe Railway Company at Blythe Junction, applied for and was

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authorized to issue $350,000.00 face value first mortgage bonds, $400,000.00 face value second mortgage bonds and $360,000.00 par value of stock for such purpose, this authorization being conditioned upon the compliance by applicant of certain provisos as regards arrangements for the payment of interest on bonds, the disposition of bonuses, etc., and such arrangements having been made satisfactory to the Commission, final permission granted to issue the stock and bonds to be sold at not less than 80 for the purposes as specified.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

This Commission has heretofore, on September 4, 1915, issued an order (Decision No. 2743) authorizing the applicant herein to issue $350,000.00 face value of its first mortgage 6 per cent bonds, $400,000.00 face value of its second mortgage 6 per cent bonds and 3,600 shares of its capital stock for the construction of its proposed railroad from Blythe Junction to Blythe, upon conditions therein specified.

These conditions provided that the applicant should submit to this Commission a statement of its plan to meet interest during the first two or three years after completion of said railway; a copy of its contracts for the construction of said railway and a statement of bonuses paid or to be paid.

It was further provided that all such bonuses or grants, unless otherwise authorized by this Commission, should be made payable or assigned to the applicant.

California Southern Railroad Company has now filed with this Commission the data and information required in said order (Decision No. 2743), and requests a supplemental order from this Commission approving its contracts for the construction of its railway; approving its proposed deeds of trust; and authorizing it to issue forthwith sufficient securities to make payments now due to the Blythe Construction Company under the terms of its proposed contract for the construction of its railway.

The contract provides that the entire road, forty-three miles, between Blythe Junction and Blythe, shall be of standard gauge and built and equipped in accordance with the estimate filed by the contractor, copy of which has also been filed with the Commission, for the sum of $667,250.00. The contract contains the provision that if changes are to be made diminishing or increasing the quantity or extent of the work covered in the contract, the amount payable to the contractor shall then be diminished or increased proportionately and in accordance with the prices specified in the contractor's estimate referred to.

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Payment is to be made to the contractor at the option of the railroad company, in lieu of cash, in securities of the railroad company, as follows:

"(1) Stock of the par value of one hundred (100.00) dollars per share at eighty (80.00) dollars per share, not exceeding, however, in all, an amount in excess of 10 per cent of the total contract price.

(2) First mortgage 6 per cent gold bonds (the issue thereof to be limited to three hundred fifty thousand (350,000.00) dollars at 80 per cent of the par or face value thereof), in an amount not less than $6,000.00 in par value per mile, to be delivered as the construction work progresses, as provided in paragraph ten hereof.

(3) Second mortgage 6 per cent gold bonds (the issue thereof to be limited to four hundred thousand (400,000.00) dollars at 80 per cent of the par or face value thereof), in an amount not less than $5,500.00 in par value per mile, to be delivered as the construction work progresses, as herein provided in paragraph ten hereof."

It is also provided in the contract that in the event said bonds be taken in lieu of cash, the contractor agrees to accept for the interest coupons attached thereto becoming due prior to three years from the date thereof, bonds of the same class and at the same percentage of par value. No authorization for the issue of bonds to pay interest accruing subsequent to the completion of construction is herein given.

The applicant has filed with this Commission an assignment of all bonus agreements from the Blythe Construction Company to the California Southern Railroad Company. These bonuses will therefore be payable for the benefit of the railway enterprise.

The applicant proposes to execute two deeds of trust: one to secure $350,000.00 face value of first mortgage bonds, and the other to secure $400,000.00 face value of second mortgage bonds.

I believe the applicant has made a showing upon which this Commission should issue a further order providing for the issue of the stocks and bonds as herein requested. Accordingly I submit the following form of order:

SECOND SUPPLEMENTAL ORDER.

California Southern Railroad Company having applied to this Commission for authority to issue stocks and bonds as specified in the foregoing opinion, and a hearing having been held and it appearing that the purposes for which it is proposed to issue said stock and said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that California Southern Railroad Company be granted authority and it is hereby granted authority to issue $350,000.00 face value of its first mortgage 6 per cent bonds; to issue $400,000.00

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face value of its second mortgage 6 per cent bonds; and to issue $360,000.00 par value of its capital stock.

The authority herein granted is granted upon the following conditions and not otherwise:

(1) The bonds herein authorized to be issued shall be sold so as to net the applicant not less than 80 per cent of the face value plus the accrued interest thereon.

(2) $285,000.00 par value of the stock herein authorized to be issued shall be sold so as to net the applicant not less than 80 per cent of the par value thereof.

(3) $75,000.00 par value of the stock herein authorized to be issued may be issued to J. M. Neeland for services rendered in connection with the organization and promotion of California Southern Railway; $37,500.00 par value of said stock to be issued forthwith and the balance of $37,500.00 to be issued to said J. M. Neeland after the applicant herein shall have completed its line of railway from Blythe to Blythe Junction.

(4) The proceeds to be derived from the sale of the stock and bonds herein authorized to be issued shall be used for the following purposes:

(*a*) For the construction of applicant's line of railway from Blythe to Blythe Junction, in Riverside County, in accordance with the contract between the applicant herein and Blythe Construction Company, a copy of which has been filed with this Commission and marked "Exhibit A."

(*b*) For such other purposes in connection with the construction of applicant's line of railway as may hereafter be authorized by this Commission.

(5) The applicant herein shall keep accurate and complete accounts in accordance with the classification as prescribed by the California Railroad Commission for steam railroads, and periodical payments to the contractor shall be made only upon detailed estimates furnished by the contractor.

(6) The stocks and bonds herein authorized to be issued shall be issued in such ratio and in such proportions that the par value of the stock outstanding shall at no time be less than 25 per cent of the face value of the bonds issued and outstanding under this order.

(7) It is further ordered that the applicant be granted authority and it is hereby granted authority to execute a deed of trust to secure its proposed issue of $350,000.00 of its first mortgage bonds and to execute a deed of trust to secure its issue of $400,000.00 of second mortgage bonds; said deeds of trust to be substantially in the form of copies of said deeds of trust filed in connection with this application and marked Exhibits "A" and "B," respectively.

(8) The approval herein given of said mortgages is for the purpose of this proceeding only, and an approval in so far as this Commission has

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jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgages as to any other legal requirements to which said mortgages may be subject.

(9) California Southern Railroad Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stocks and bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said stocks and bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(10) The authority herein given shall apply to such stock and to such bonds as shall have been issued on or before December 31, 1916.

(11) The authority herein granted to issue stock and bonds is conditioned upon the payment by the applicant of the fee prescribed under the Public Utilities Act.

The foregoing first supplemental opinion and second supplemental order are hereby approved and ordered filed as the first supplemental opinion and second supplemental order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 19th day of November, 1915.

DECISION No. 2911.

IN THE MATTER OF THE APPLICATION OF MIDWAY GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF ITS BONDS, THE EXECUTION AND DELIVERY OF A MORTGAGE SECURING THE SAME, THE ISSUE OF STOCK AND THE ISSUE OF NOTES PAYABLE AT PERIODS OF MORE THAN TWELVE MONTHS AFTER THE DATE THEREOF.

Application No. 1644.

Decided November 19, 1915.

REPORT OF THE COMMISSION.

THIRD SUPPLEMENTAL ORDER.

Whereas this Commission in Decision No. 2519, dated June 25, 1915, authorized Midway Gas Company to issue $38,000.00 face value of first and refunding mortgage gold bonds for the purpose of reimbursing

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applicant's treasury for moneys expended out of income for extensions and betterments and for reconstruction of its transmission line; and

Whereas applicant has requested authority to pledge, pending the sale of the bonds, the said $38,000.00 face value of first and refunding mortgage gold bonds to secure the payment of its 7 per cent note or notes running for terms not exceeding one year; applicant further requests that the face amount of said note or notes shall not be less than 60 per cent of the face value of the bonds pledged as collateral; and good cause appearing,

It is hereby ordered that Midway Gas Company be given authority and hereby is given authority to pledge as collateral $38,000.00 face value of first and refunding mortgage gold bonds, heretofore authorized for the purpose of reimbursing applicant's treasury for moneys expended out of income for extensions and betterments and for reconstruction of its transmission line.

It is hereby further ordered that the term of the note or notes, the payment of which is to be secured by said $38,000.00 face value of first and refunding mortgage gold bonds, shall not exceed one year; nor shall the face amount of the note or notes be less than 60 per cent of the face value of the collateral.

It is hereby further ordered that this Commission's Decision No. 2519, dated June 25, 1915, as amended by Decision No. 2735, dated September 1, 1915, and Decision No. 2819, dated October 8, 1915, shall remain in full force and effect except as modified by this third supplemental order.

Dated at San Francisco, California, this 19th day of November, 1915.

DECISION No. 2912.

IN THE MATTER OF THE PETITION OF THE CITY OF PALO ALTO FOR AN ORDER FIXING AND DETERMINING THE JUST COMPENSATION TO BE PAID TO PALO ALTO GAS COMPANY FOR ITS PROPERTY.

Application No. 1760.

Decided November 20, 1915.

City of Palo Alto, desiring to purchase the system of the Palo Alto Gas Company, applies to the Commission, under section 47 of the Public Utilities Act, to fix the just compensation to be paid therefor. The gas company moves for a dismissal of the application, basing its contention on a clause contained in its franchise which provides that after a period of ten years, should the city desire to acquire this property, a committee of five members shall be appointed to fix the purchase price, and that, therefore, applicant can not proceed to acquire this property by any different proceeding.

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Held, That the clause mentioned is merely an option and not a contract binding the city to proceed as therein outlined; also that leading authorities hold that a municipality has not the right to contract away its powers to acquire property by eminent domain proceedings. Motion to dismiss denied.

Norman E. Malcolm, city attorney, for City of Palo Alto.

Allen L. Chickering, for Palo Alto Gas Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

OPINION ON MOTION TO DISMISS.

This is a motion made by Palo Alto Gas Company to dismiss the petition of the City of Palo Alto herein, on the ground that this Commission does not have jurisdiction to entertain the same.

The petition of the City of Palo Alto herein was filed under the provisions of section 47 of the Public Utilities Act, providing in part that if any county, city and county, incorporated city or town, municipal water district, county water district, irrigation district, public utility district or any other public corporation may file with the Railroad Commission a petition setting forth the intention of petitioner to acquire under eminent domain proceedings, or otherwise, the property of any existing public utility, whereupon the Railroad Commission is charged with the duty of fixing and determining the compensation to be paid by petitioner to the public utility affected. This compensation is made conclusive in eminent domain proceedings.

The petition herein alleges, in effect, that city of Palo Alto is a municipal corporation organized and doing business under a freeholders' charter; that Palo Alto Gas Company is a public utility corporation engaged in the business of distributing and selling gas to the inhabitants of the city of Palo Alto; that on September 17, 1904, the town of Palo Alto, petitioner's predecessor, granted to D. O. Druffel a gas franchise which was thereafter assigned to Palo Alto Gas Company, a copy of said franchise being attached to the petition and marked Exhibit "A"; that on May 10, 1915, the council of the city of Palo Alto passed a resolution declaring that it is the intention of the city to acquire, under eminent domain proceedings, or otherwise, the property and rights of Palo Alto Gas Company within said city; and that it is the intention of the city of Palo Alto to acquire under eminent domain proceedings, or otherwise, the existing utility known as Palo Alto Gas Company, together with its property and rights, which said public utility and its property and rights consist of a gas distributing system partially completed, located in the city of Palo Alto, and consisting of all pipes, mains and service laterals laid in the streets and avenues of said city, together with meters. Petitioner asks

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that the Railroad Commission fix and determine the just compensation to be paid by the city of Palo Alto for said public utility, its property and rights.

Attached to the petition as Exhibit "A" is a copy of Ordinance No. 105 of the town of Palo Alto, adopted on September 17, 1904, granting to D. O. Druffel, his heirs, executors, administrators and assigns the franchise, for a term of fifty years, to construct, equip, operate and maintain a gas plant in the town of Palo Alto, and to lay gas pipes for the purpose of carrying gas for light, heat and power in and along the streets and thoroughfares of the town of Palo Alto, and to manufacture, distribute and sell gas to the inhabitants of the town, and to receive and collect charges therefor. The franchise was granted upon certain terms, conditions, restrictions and limitations, of which it is necessary, for the purpose of this decision, to refer to only the first condition, reading as follows:

> "First: That said town of Palo Alto shall, at any time after the expiration of ten (10) years from the granting of said franchise, have the option to purchase said gas manufacturing plant and distributing system, together with all other property both real and personal used in connection with the operation of or appurtenant to said gas manufacturing plant and distributing system, at a reasonable price, to be arrived at in the manner following, to wit: A committee shall be appointed consisting of five (5) persons, two of whom shall be selected by the grantee hereof, or his heirs, executors, administrators or assigns, two by the board of trustees or other governing body of the town of Palo Alto, and the fifth by the four thus selected. Said committee or a majority of it shall investigate the condition and value of said gas manufacturing plant and distributing system, together with all other property both real and personal used in connection with the operation of or appurtenant to said gas manufacturing plant and distributing system, and report the same to the board of trustees or other governing body of said town of Palo Alto, and if said board of trustees or other governing body of said town of Palo Alto should then determine to acquire said gas manufacturing plant and distributing system at the valuation so reported to it by said committee, the grantee hereof, or his heirs, executors, administrators or assigns, shall thereupon and upon the payment of said valuation so fixed as aforesaid convey said gas manufacturing plant and distributing system, together with all other property both real and personal used in connection with the operation of or appurtenant to said gas manufacturing plant and distributing system, to said town of Palo Alto."

It will be observed that the franchise refers to a "gas plant" in the town of Palo Alto, as well as to a distributing system therein. The description of the property contained in the petition refers to "a gas distributing system partially completed," and makes no reference to

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a gas plant. A gas plant has never been constructed in the town of Palo Alto under this franchise, the rights exercised thereunder being limited to the construction and operation of a gas distributing system.

The sole point urged by Palo Alto Gas Company in opposition to this Commission's jurisdiction is that Ordinance No. 105 having set forth one method by which the town of Palo Alto might purchase the property to be installed under the franchise, the town of Palo Alto and its successor, the city of Palo Alto, are precluded from availing themselves of any different method. It is urged that by reason of the provisions with reference to arbitration contained in said ordinance, the city of Palo Alto has no power to acquire the Palo Alto Gas Company's property by the exercise of the power of eminent domain.

I am unable to agree with this contention. The town of Palo Alto did not contract to buy the property to be installed under the franchise. The town merely reserved to itself the *option* to buy the property, if it desired so to do, at a price to be fixed by a board of arbitration.

There is nothing in Ordinance No. 105 showing the slightest intention on the part of the town of Palo Alto to deprive itself of the right at any time to acquire by eminent domain proceedings the property to be installed under the franchise.

Furthermore, under the uniform current of authority, the town of Palo Alto had no power to contract away its right to exercise the power of eminent domain: Pond, Public Utilities, section 574; McQuillan, Municipal Corporations, volume 4, section 1457; Lewis, Eminent Domain (3d edition), section 406; 15 Cyc. 557.

It being admitted that the present proceeding falls within the provisions of section 47 of the Public Utilities Act, and the town of Palo Alto having in no way estopped itself from the exercise of the power of eminent domain and from the filing of this proceeding under the provisions of said section 47, I conclude that the Palo Alto Gas Company's contention that this Commission does not have jurisdiction in this proceeding is not well taken.

The motion to dismiss should be denied and the petition herein should be set down for hearing on the merits.

I submit the following form of order:

ORDER.

The motion of Palo Alto Gas Company to dismiss the petition in the above entitled proceeding having come on duly for hearing, and argument having been had thereon, and said motion having been submitted,

It is hereby ordered that said motion be and the same is hereby denied.

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The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of November, 1915.

DECISION No. 2913.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR LEAVE TO ISSUE CERTAIN NOTES AND BONDS.

Application No. 1730.

Decided November 20, 1915.

Applicant finding itself unable to meet its interest obligations, submits to the Commission a plan of refinancing along the following lines: The proposed bondholders' agreement provides for the deferment of interest payments for three years, at the end of which time, should the company still be unable to meet such payments, bondholders agree to accept bonds at 80 in lieu thereof. The proposed stockholders' agreement calls upon the stockholders to loan the company $3.00 per share of stock, accepting in exchange promissory notes secured by bonds of the company. Should the company be unable to pay the notes by January 1, 1918, stockholders shall agree to accept bonds at 80 instead.

These plans, if carried out, will require that applicant issue $867,000.00 face value of bonds at 80; pledge $525,000.00 face value of bonds as security for $262,200.00 promissory notes; issue $328,000.00 of the bonds pledged to secure notes; issue $262,200.00 face value 6 per cent promissory notes.

Protestants contend that the Commission has no power to authorize the issuance of bonds or other evidences of indebtedness, the proceeds of which are to be used for operating expenses or to take care of a deficit and it, therefore, has no right to authorize the securities herein applied for. While the Commission does not look with favor upon the capitalization of operating expenses and the cost of maintaining service, it has the power and will, in extraordinary cases, authorize securities for such purposes, though in granting this authorization no recommendation made that applicant be permitted to capitalize bond interest or operating expenses.

Held, After detailed review of applicant's financial history and present condition, it is authorized to issue $867,000.00 first mortgage bonds, $328,000.00 first mortgage bonds and $262,200.00 6 per cent promissory notes. Such bonds may be sold to stock or bondholders for cash or may be issued at not less than 80 in lieu of bond interest earned and used by the company for capital purposes. Proceeds of bonds and notes to be used solely for the purpose of discharging promissory notes and accounts payable, when approved by the Commission. Bonds authorized to be pledged as security for notes shall be so conditioned that should applicant find itself unable to meet such notes when due, the holders thereof shall take bonds at 80.

Jesse H. Steinhart, for Applicant.

Allan P. Matthew and *Howard D. Smith*, for Protestants.

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REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

In this application Oakland, Antioch and Eastern Railway asks this Commission to authorize the issue of bonds and notes necessary to carry out certain agreements between it and its stockholders and between the applicant, its bondholders and the bondholders of the Oakland and Antioch Railway and the bondholders of the San Ramon Valley Railroad.

This application was filed on June 18, 1915. The first hearing thereon was held June 28th. The intervenor, Mr. Howard D. Smith, requested further time and thereafter an intervention was filed on behalf of Mr. Smith and certain other bondholders of Oakland and Antioch Railway. A further hearing was held in September, 1915. The matter was argued before the Commission by Mr. Jesse Steinhart for applicant, and Mr. Allan P. Matthew for the protestants. Thereafter briefs were filed and the matter now having been fully submitted is ready for decision.

The bondholders' agreement, marked Exhibit "A" and attached to this application, contemplates the deferment of the payment of the interest coupons attached to the bonds of Oakland, Antioch and Eastern Railway, Oakland and Antioch Railway and San Ramon Valley Railroad, for a period of three years ending January 1, 1918. During the interim the company agrees to pay interest at the rate of 6 per cent per annum on the unpaid coupons. If, at the expiration of the three years, the company is unable to pay the matured interest coupons, the bondholders agree to accept in payment therefor bonds of Oakland, Antioch and Eastern Railway at 80 per cent of their face value.

The stockholders' agreement, marked Exhibit "B" and attached to this application, calls upon the stockholders to lend Oakland, Antioch and Eastern Railway $3.00 per share of stock owned and to accept the company's 6 per cent promissory notes secured by bonds of Oakland, Antioch and Eastern Railway at a ratio of 2 to 1. Should the company be unable to pay the notes on or before January 1, 1918, the stockholders agree to accept in payment of said 6 per cent promissory notes, bonds pledged as security therefor at 80 per cent of their face value.

Applicant in Exhibit No. 17 reports that holders of the following amounts of bonds and stock have signed the various agreements as indicated:

	Signed	Outstanding	Per cent
Bonds—			
Oakland and Antioch	$1,752,000	$2,000,000	87.6
Oakland, Antioch and Eastern	2,044,000	2,500,000	81.76
San Ramon Valley	64,000	100,000	64.0
Stock—			
Oakland, Antioch and Eastern	78,680 shares	87,400 shares	90.4

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The amount of bonds which applicant proposes to issue is contingent, of course, upon the number of bondholders and stockholders who subscribe to the various agreements. The following tables show the number of bonds which applicant would propose to issue if all bondholders and stockholders subscribe, and the amount if only those who have now signed the agreements become parties to the plan:

	Interest on bonds under agreement as presented	Interest on total bonds outstanding
Interest per annum on Oakland and Antioch bonds	$87,600 00	$100,000 00
Interest per annum on Oakland, Antioch and Eastern bonds	102,200 00	125,000 00
Interest per annum on San Ramon Valley bonds	3,840 00	6,000 00
Total interest per annum	$193,640 00	$231,000 00
Total interest for 3 years	580,920 00	693,000 00
Amount of bonds to be issued at 80 to pay foregoing bond interest	726,150 00	866,250 00

The stockholders are called upon to advance to the company $3.00 per share and to accept the company's notes secured by bonds equal in face value to twice the face value of the notes. Out of 87,400 shares of stock outstanding, the holders of 78,680 shares have signed the stockholders' agreements. The following table shows the amount to be obtained from the stockholders; the face value of the notes to be issued; the amount of bonds to be pledged as collateral and the amount of bonds applicant desires to sell on or before January 1, 1918, to pay the notes:

	Based on present subscribers	Based on total stock outstanding
Amount to be advanced to company	$236,040 00	$262,200 00
Amount of notes to be issued	236,040 00	262,200 00
Amount of bonds to be pledged	472,080 00	524,400 00
Amount of bonds to be issued at 80 to pay notes	295,050 00	327,780 00

Assuming that the applicant proposes to issue the maximum amount of bonds and notes as embodied in its plan, the application will resolve itself into a request for authority as follows:

1. To issue $867,000.00 of Oakland, Antioch and Eastern bonds at 80 per cent of face value.

2. To pledge $525,000.00 of Oakland, Antioch and Eastern Railway bonds as collateral security for $262,200.00 of notes.

3. To issue and sell $328,000.00 of Oakland, Antioch and Eastern bonds, being a part of the $525,000.00 of Oakland, Antioch and Eastern Railway bonds which the applicant proposes to pledge.

4. To issue $262,200.00 face value of promissory notes.

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It is proposed to issue the $867,000.00 of bonds to the present bondholders of Oakland, Antioch and Eastern Railway, Oakland and Antioch Railway and San Ramon Valley Railroad in consideration of their interest coupons, on the assumption that such amount of interest will have been earned by the Oakland, Antioch and Eastern Railway and used to discharge floating indebtedness of Oakland, Antioch and Eastern Railway.

It is proposed to pledge the $525,000.00 of bonds as collateral security for $262,200.00 of notes to be issued by the Oakland, Antioch and Eastern Railway to its stockholders in consideration of a loan which they have been asked to make to the company of $262,200.00. It is proposed to sell $328,000.00 of the $525,000.00 of pledged bonds to the stockholders of the company in satisfaction of their advances in the sum of $262,200.00 and in cancellation of the promissory notes of the face value of $262,200.00.

If the applicant is successful in its proposals, its application would embrace a request from this Commission for a total issue of $1,195,000.00 of Oakland, Antioch and Eastern Railway bonds.

Oakland and Antioch Railway was incorporated January 13, 1909, with an authorized capital stock of $3,500,000.00, divided into 35,000 shares of the par value of $100.00 per share. All of the stock was originally issued to the promoters of the enterprise. Thereafter, the promoters utilized $2,000,000.00 par value of said stock to sell the company's bonds, the purchaser of each bond receiving 10 shares of stock as a bonus.

The company was organized to build an interurban electric railway from Bay Point, Contra Costa County, to Oakland and San Francisco. It has an authorized bond issue of $2,000,000.00, the payment of which is secured by a mortgage executed to Anglo-California Trust Company. The lien of this mortgage covers all of the property of the railway owned at the time the indenture was executed or thereafter acquired. The bonds, bearing 5 per cent interest, are dated July, 1910, and mature July, 1940. The mortgage requires the company to pay to the trustee for the purpose of creating a sinking fund to be used to redeem the bonds, the following amounts:

On or before May 1, 1916, and annually thereafter, to and including 1925	$15,000 per annum
On or before May 1, 1926, and annually thereafter, to and including 1935	35,000 per annum
On or before May 1, 1936, and annually thereafter, to and including 1940	75,000 per annum

Any part, or all of the sinking fund payments, may be made by the railway by surrendering to the trustee for cancellation outstanding bonds secured by this mortgage. The bonds so delivered shall be received by the trustee at the face value in lieu of cash.

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The control of the foreclosure proceedings rests with the trustee or the holders of a majority of the bonds outstanding.

Oakland, Antioch and Eastern Railway was organized April 1, 1911, with an authorized stock issue of $10,000,000.00 divided into 10,000 shares of the par value of $100.00 per share. Stock in the amount of $7,000,000.00 was issued to acquire $3,500,0000.00 par value of stock of Oakland and Antioch Railway; $2,500,000.00 was issued for services rendered in connection with the financing of the company. Because of non-payment of assessments, stock in the amount of $1,260,000.00 has reverted to the company.

Oakland, Antioch and Eastern Railway was organized for the purpose of constructing a line of railway from Bay Point to Sacramento and for the further purpose of financing the Oakland and Antioch Railway. To that end, Oakland, Antioch and Eastern Railway on October 1, 1911, executed to Union Trust Company of San Francisco, trustee, a mortgage or deed of trust securing the payment of $5,000,000.00 face value of 5 per cent 30-year bonds. The bonds are dated October 1, 1911, and mature October 1, 1941. Under the mortgage or deed of trust the company is obliged to pay on or before February 1st of each year, hereinafter indicated, to the trustee for the purpose of creating a sinking fund, amounts as follows:

Beginning in 1918 and ending with the year 1927, inclusive, $35,000 per annum
Beginning in 1928 and ending with the year 1937, inclusive, 75,000 per annum
Beginning in 1938 and ending with the year 1941, inclusive, 160,000 per annum

In lieu of cash payments, the company may surrender to the trustee for cancellation outstanding bonds secured by this mortgage. If at the date when any sinking fund payment becomes due, only a portion of the authorized bond issue is outstanding, the sinking fund payments shall be reduced to a sum which shall bear the same proportion to the sum above indicated as the bonds then outstanding shall bear to the total authorized issue.

Section 1 of article II of the mortgage or deed of trust of Oakland, Antioch and Eastern Railway reads as follows:

> "SECTION 1. The trustee shall certify and deliver to the railway, or upon its order, at any time and from time to time, any number or all of the bonds secured hereby, upon receiving a copy of a resolution of the board of directors of the railway, attested by its secretary under its seal, requesting such certification and delivery and specifying the numbers of the bonds to be certified and delivered. The trustee shall have no responsibility for the use of any bond so delivered or for the application of the proceeds thereof, but the railway covenants that such bonds and the proceeds of the sale thereof shall be used only for the purpose of constructing and com-

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pleting its railroad or for the purchase of property within the purposes of the railway."

The holders of a majority of the bonds outstanding have the power to control foreclosure proceedings.

Oakland, Antioch and Eastern Railway has also an authorized issue of $700,000.00 face value of 6 per cent 4-year convertible gold notes. The payment of the notes is secured by the pledge of bonds of Oakland, Antioch and Eastern Railway at the ratio of 166⅔ to 100. The notes mature February 1, 1918. Notes in the amount of $317,500.00 are reported by the applicant as outstanding. The holders of the notes may, at their option, exchange them on any interest payment date for first mortgage bonds pledged as security therefor on the basis of 85 per cent of the face value of the bonds.

San Ramon Valley Railroad was organized March 15, 1912, for the purpose of constructing a line of railway from Walnut Creek, Contra Costa County, to the town of Danville in Contra Costa County. The company has an authorized stock issue of $250,000.00 divided into 2,500 shares of the par value of $100.00 per share. All of the stock except enough to qualify directors is outstanding and is held by Oakland, Antioch and Eastern Railway. The company has an authorized bond issue of $250,000.00, of which $100,000.00 is outstanding. The bonds are dated March 1, 1912, and mature March 1, 1942. They bear interest at the rate of 6 per cent per annum. The payment, both as to principal and interest, is secured by a mortgage or deed of trust executed to Union Trust Company of San Francisco.

The company covenants that the bonds and the proceeds therefor shall be used only for the purpose of constructing and completing its railroad, or for the purchase of property within the purposes of the railroad.

The company further covenants that for the purpose of creating a sinking fund, it will pay to the trustee the following amounts:

On January 1, 1918, and annually thereafter, to and including 1927	$1,875 per annum
On January 1, 1927, and annually thereafter, to and including 1937	4,375 per annum
On January 1, 1937, and annually thereafter, to and including 1942	9,375 per annum

The deed of trust permits the company to deliver to the trustee for cancellation outstanding bonds in lieu of cash payments. Moreover, if all of the bonds are not outstanding at the time any sinking fund payment becomes due, the amount of said sinking fund payment then due shall be reduced to a sum which shall bear the same proportion to the

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sum to be paid as the bonds then outstanding shall bear to the total authorized issue.

The holders of a majority of the bonds outstanding are given power to control foreclosure proceedings.

The property of both Oakland and Antioch Railway and San Ramon Valley Railroad is leased to Oakland, Antioch and Eastern Railway. The lessee has agreed to pay as a rental an amount equal to the bond interest and other fixed charges of the respective roads. The lessee has further agreed to keep the property of the lessors in good repair and condition and pay the principal of the bonds when due.

By virtue of the leases, the earnings and expenses of San Ramon Valley Railroad and Oakland and Antioch Railway are merged with those of Oakland, Antioch and Eastern Railway.

These three properties, therefore, constitute a system of railways between Oakland and Sacramento, with branches to Pittsburg, Wallwood and Diablo, a total distance of 98.28 miles. Under an agreement with San Francisco-Oakland Terminal Railways, the Oakland, Antioch and Eastern Railway gains access to San Francisco by use of the tracks, piers and ferry system of the San Francisco-Oakland Terminal Railways. This brings the total operated mileage to 103.17 miles.

The earnings of Oakland, Antioch and Eastern Railway, as reported to this Commission, for the years ending June 30, 1914, and June 30, 1915, have been as follows:

Items	1914	1915
Operating revenues	$454,305 09	$541,904 18
Operating expenses	320,925 05	412,989 31
Net operating revenue	$133,380 04	$128,914 87
Miscellaneous income		276 03
Gross income less operating expenses		$129,190 90
Deductions from Income.		
Taxes	$2,868 84	$13,363 97
Interest on funded debt	108,624 71	137,972 47
Rents payable	101,967 18	121,682 82
Interest on unfunded debt		56,567 27
Total deductions	$213,080 73	$329,586 53
Loss for year	$80,080 69	$200,395 63

The applicant submitted a statement showing gross earnings for July, 1915, of $57,800.00 and for August, 1915, of $65,000.00.

Reference will be made hereafter to the earnings statement.

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In Exhibit No. 8, applicant reports the assets and liabilities of Oakland, Antioch and Eastern Railway, as of July 31, 1915, as follows:

Assets.

Plant, equipment, road, etc.		3,783,265 89
Cash		10,280 36
Accounts receivable		109,057 40
Assessment No. 5 receivable		40,309 00
San Ramon Valley Railroad intercompany account		31,874 91
Oakland and Antioch Railway stock investment account	$7,000,000 00	
Oakland and Antioch assessments 1 to 4 paid	875,000 00	
		7,875,000 00
San Ramon Valley stock	$242,600 00	
Less San Ramon Valley Railroad leasehold privilege	242,600 00	
Taxes paid in advance		24,312 23
Insurance paid in advance		4,864 96
Property, engineering surveys, etc.		3,000,000 00
Bond discount		449,654 95
Discount on capital stock		1,717 50
Material and supplies		27,406 08
Deficit		6,229 37
Profit and loss		286,850 01
Profit and loss—Steamer Bridgit		13,283 30
Bonds out as collateral	($2,090,000 00)	
Bonds in company treasury	(410,000 00)	
Deferred charges to profit and loss		411 81
		$15,664,517 77

Liabilities.

Capital stock		$8,740,000 00
Treasury stock		1,260,000 00
Bonds authorized	($5,000,000 00)	
Bonds out as collarteral	(2,090,000 00)	
Bonds in company treasury	(410,000 00)	
Bonds sold and outstanding		2,500,000 00
Four-year convertible gold notes outstanding		317,500 00
Levy of assessments		1,346,220 00
Accounts payable		208,964 40
Bills payable		1,032,207 13
Oakland and Antioch intercompany account		144,786 16
Accrued interest on funded debt		105,510 01
Accrued interest on unfunded debt		5,613 24
Other deferred liabilities		3,716 83
		$15,664,517 77

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In Exhibit No. 9, applicant reports the assets and liabilities of Oakland and Antioch Railway as of July 31, 1915, as follows:

Assets.

Plant, equipment, road, etc.	$2,497,292 35
Accounts receivable	25,363 34
Oakland, Antioch and Eastern intercompany account	144,786 16
San Ramon Valley Railroad intercompany account	32,249 55
Cash	500 28
Stock issued for right of way, engineering, franchises, etc.	3,500,000 00
Bond discount	300,178 95
Discount on capital stock	12 50
Interest on funded and unfunded debt	8,843 90
	$6,509,227 03

Liabilities.

Bonds outstanding	$2,000,000 00
Capital stock	3,500,000 00
Levy of assessments 1 to 4	875,000 00
Accounts payable	4,828 54
Notes payable	11,421 25
Interest matured (unpaid)	109,133 34
Rent from lease of road	8,843 90
	$6,509,227 03

In Exhibit No. 10, applicant reports the assets and liabilities of San Ramon Valley Railroad as of July 31, 1915, as follows:

Assets.

Plant, etc.	$250,000 00
Construction	162,407 77
Cash	17 47
Bond discount	15,396 05
Accounts receivable	58 72
Interest on unfunded debt	25 44
Interest on funded debt	515 00
	$428,420 45

Liabilities.

Capital stock	$250,000 00
Bond account	100,000 00
Accounts payable	5,850 11
Bills payable	2,305 00
Oakland and Antioch intercompany account	32,249 55
Oakland, Antioch and Eastern intercompany account	31,874 91
Interest matured (unpaid)	5,575 00
Rent from lease of road	540 44
Accrued interest on unfunded debt	25 44
	$428,420 45

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Summarized, the reports of applicant show the following indebtedness:

Bonds outstanding		$4,600,000 00
Oakland, Antioch and Eastern Railway	$2,500,000 00	
Oakland and Antioch Railway	2,000,000 00	
San Ramon Valley Railroad	100,000 00	
Gold notes—Oakland, Antioch and Eastern		317,500 00
Bills payable		1,045,933 38
Oakland, Antioch and Eastern Railway	$1,032,207 13	
Oakland and Antioch Railway	2,305 00	
San Ramon Valley Railroad	11,421 25	
Accounts payable		219,643 05
Oakland, Antioch and Eastern Railway	$208,964 40	
Oakland and Antioch Railway	4,828 54	
San Ramon Valley Railroad	5,850 11	
Intercompany accounts payable		208,910 62
Due from Oakland, Antioch and Eastern Railway to Oakland and Antioch Railway	$144,786 16	
Due from San Ramon Valley Railroad to Oakland and Antioch Railway	32,249 55	
Due from San Ramon Valley Railroad to Oakland, Antioch and Eastern Railway	31,874 91	
Unpaid interest		225,831 59
Oakland, Antioch and Eastern Railway, bonded debt	$105,510 01	
Oakland, Antioch and Eastern Railway, floating debt	5,613 24	
Oakland and Antioch Railway	109,133 34	
San Ramon Valley Railroad	5,575 00	
Total		$6,617,818 64

As an offset against this liability, applicant reports current assets as follows:

Cash		$10,798 11
Oakland, Antioch and Eastern Railway	$10,280 36	
Oakland and Antioch Railway	500 28	
San Ramon Valley Railroad	17 47	
Accounts receivable		174,788 46
Due on assessment No. 5	$40,309 00	
Oakland, Antioch and Eastern Railway	109,057 40	
Oakland and Antioch Railway	25,363 34	
San Ramon Valley Railroad	58 72	

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Accounts receivable—intercompany		208,910 62
Due from San Ramon Valley Railroad to Oakland, Antioch and Eastern Railway	$31,874 91	
Due from Oakland, Antioch and Eastern Railway to Oakland and Antioch Railway	144,786 16	
Due from San Ramon Valley Railroad to Oakland and Antioch Railway	32,249 55	
Materials and supplies		27,406 08
Prepayments		29,177 19
Total current assets		$451,080 46

Of the outstanding notes $248,000.00 have been endorsed by some of the directors of applicant.

The difference between the liabilities and current assets amounts to $6,166,738.18. In addition to the actual liability of $6,168,112.82, there is a contingent liability of bonds pledged as collateral, amounting to $2,090,000.00.

The book value of the property of the various companies, as above indicated, is as follows:

Oakland, Antioch and Eastern Railway	$3,783,265 89
Oakland and Antioch Railway	2,497,292 35
San Ramon Valley Railroad	162,407 77
Total	$6,422,966 01

Only the bonds, gold notes and notes payable are interest bearing. The annual interest charge amounts to approximately $315,000.00 per annum. It is because of applicant's inability to pay the interest and its floating indebtedness that it asks this Commission to approve the issue of bonds and notes as contemplated in the agreements to which reference has heretofore been made.

The bondholders' agreement, marked Exhibit "A," calls upon the bondholders of Oakland, Antioch and Eastern Railway, Oakland and Antioch Railway and San Ramon Valley Railroad to deposit their interest coupons maturing during 1915, 1916 and 1917 with Union Trust Company of San Francisco, trustee. On or before January 1, 1918, Oakland, Antioch and Eastern Railway agrees to deposit with the trustee such an amount of its first mortgage bonds, dated October 1, 1911, as at 80 per cent of the face value of the principal of said bonds shall equal the face value of all coupons which may be deposited and unpaid on January 1, 1918. During the interim, the railway agrees to pay interest at the rate of 6 per cent per annum on the deposited coupons.

On January 1, 1918, or as soon thereafter as may be practicable, the trustee shall distribute the deposited bonds to the bondholders in payment of the deposited coupons and in satisfaction of their rights under

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this agreement, on the basis of said bonds at eighty per cent of their face value and interest. Upon the delivery of the bonds, the bondholders shall surrender for cancellation their receipts showing the face value of coupons deposited with the trustee. The agreement further provides that the bondholders' committee, by a two-thirds vote, may terminate the agreement if in its judgment the interest of the bondholders shall be prejudiced by the continuance of said agreement, or in the event that any action be commenced by any creditor, which shall result in all or any part of the property owned by the Oakland, Antioch and Eastern Railway, or Oakland and Antioch Railway, or San Ramon Valley Railroad being placed under the control or in the custody of any court or any officer thereof.

The agreement shall not become effective unless approved by 75 per cent of the total sold bonds of Oakland, Antioch and Eastern Railway, and of Oakland and Antioch Railway, unless the committee should declare it operative although it be entered into by bondholders owning a smaller percentage of bonds. During the life of the agreement, the railroad companies shall under no circumstances deal with any bondholders not a party to the agreement, in any manner which shall be objectionable to the committee.

The original bondholders' agreement differed from the foregoing amended agreement in that the company agreed in the original agreement to give its 6 per cent promissory notes secured by first mortgage bonds at the ratio of 2 to 1 in payment for interest coupons.

The stockholders' agreement, marked Exhibit "B," calls upon the stockholders to lend the Oakland, Antioch and Eastern Railway the sum of $3.00 per share, payable as follows:

(*a*) January 1, 1915	$1 00 per share
(*b*) July 1, 1915	1 00 per share
(*c*) January 1, 1916	50 per share
(*d*) July 1, 1916	50 per share

The payments are to be made to Union Trust Company, who will issue to the stockholders or subscribers a receipt therefor. The railway agrees to deposit with the trustee its several promissory notes payable to the trustee in amounts equal to the aggregate amount of the payments made to the trustee by the stockholders. The notes shall be dated as of the day that the payments are due and payable, and each note shall mature on January 1, 1918 (or before, at the option of the railway), and shall bear interest payable to the trustee at 6 per cent per annum, payable semi-annually.

The railway agrees to deposit with the trustee prior to the date of each note, as security for the payment thereof, first mortgage bonds issued under its mortgage or deed of trust dated October 1, 1911, in double the face value of said promissory notes. On January 1, 1918,

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the deposited bonds shall at the rate of 80 per cent of their face value, plus accrued interest to January 1, 1918, be distributed to the stockholders in payment for loans made by them. Section 15 of the stockholders' agreement reads:

> "15. By appropriate resolution of the board of directors of the railway, prior to January 1, 1918, with due adjustment of interest, a receipt holder may be permitted to turn in his receipts to the trustee and receive his share of the deposited bonds held as security, to the value of his receipt, at the rate of eighty (80) per cent of the par value of such deposited bonds and a certificate from the trustee for his fractional interest in bonds which can not be delivered in kind."

If the company fails to pay the interest on the notes for a period of three months after due, the trustee may foreclose upon the deposited bonds for account of the receipt holders, and shall do so when requested in writing by holders of 25 per cent in value of outstanding receipts.

The agreement shall not be operative unless the owners of stock holding 90 per cent of the outstanding capital stock of Oakland, Antioch and Eastern Railway have in writing agreed to the same.

It is urged on behalf of applicant that the issue of notes and bonds as set forth in the agreements heretofore outlined should be approved in order to give this utility an opportunity to demonstrate what can be accomplished, under more favorable circumstances than have existed heretofore. It is further urged that if the agreements become operative, the company will be able to reduce its floating indebtedness and thereby its contingent liabilities. Finally it is alleged that if the agreements do not bring about the desired results, they may be terminated and no one will be injured.

I shall not discuss in detail all of the points raised by the protestant and by the applicant in their arguments and in their briefs. It will suffice to refer to certain general matters presented by counsel.

Protestants urge that this Commission has no power to authorize the issuance of bonds, stock or other evidences of indebtedness, the proceeds from which are to be used for operating expenses or to care for a deficit caused by the operation of a utility.

In support of this contention the case of *People ex rel. Binghamton Light, Heat and Power Company* vs. *Stevens et al.*, 203 N. Y. 7, 96 N. E. 114, is cited and this language is quoted from that decision:

> "The contention of the relator would enable any corporation to pay for labor, fuel and other supplies constituting the most ordinary of all operating expenses by the obligations extending less than twelve months and then apply from time to time to the Commission for authority to issue stock or bonds for the payment of such obligation and insist upon the same as a matter of right without limit."

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Attention is called to the Public Utilities Act, section 52 (*b*), the relevant provision of which is that a public utility may issue securities for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes or other evidences of indebtedness of such public utility, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made.

It is contended that the interpretation of the words "for the improvement or maintenance of its service" must be narrowed to mean expenditure for improvements and additions which will bring about improvement or maintenance of service.

With this interpretation I can not agree. If this narrow meaning be adopted the words become entirely useless and add nothing to the power of the Commission already provided for in the other language of this section.

The reading of the whole section makes it perfectly clear that the legislature intended to place wide discretion in the Commission in passing upon the proposed capitalization of public utility companies of California, and among other things, it seems clearly intended that the Commission in its discretion should have power to permit the capitalization of expenditures made in improving and maintaining service, that is to say, in actually operating the utility for the benefit of the public.

The authority above noted, in my judgment, can not be successfully used to sustain the contention of the protestant. It will be noted upon a careful reading of that decision that the language quoted from it is in answer to the contention of the utility company that as a matter of right, operating expenses could be capitalized and the court says in answer to this that the utility can not claim this privilege as a matter of right, and points out the evils which would result if such right were established.

I am not here contending that operating expenses or the cost of maintaining service should ordinarily be capitalized. In fact, I believe only in extraordinary cases should this be permitted, but I do contend that the Commission has the power in proper cases to make such authorization.

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However, as will hereinafter in this opinion appear, it is not recommended that applicant be permitted to capitalize bond interest or operating expenses. Therefore, the power of the Commission in this regard is not determinative of this proceeding. I am commenting on it here so that no misapprehension as to the Commission's conception of its powers will be entertained.

The protestant contends further that the plan is in violation of the trust deed of the Oakland, Antioch and Eastern Railway and of the Oakland and Antioch Railway. The order of this Commission will not permit of the use of bonds for any purpose not specified in the trust deed, nor will the order of this Commission in any way authorize or permit any impairment of the security behind the various bond issues. The violation of the trust deed begins with the default in the interest upon the bonds and naturally extends into other invasions of the rights of the bondholders as expressed in these trust deeds. But as the rights of the bondholders are expressed in the trust deeds, so also are their remedies. If all of the bondholders should consent to an amendment or abridgement of their rights, as expressed in the trust deed, and if such amendment were not contrary to public policy, it could not well be urged that this Commission should hold a utility to the letter of its agreement. If the holders of 81 per cent or 87 per cent of the outstanding bonds consent to a modification of their rights under the agreement and desire to sacrifice those rights, or some of the rights, thereby granted, this Commission would be slow to stay them in their purpose to sacrifice those rights if their proposals did not violate sound public policy and worked no injury or inequity upon the minority bondholders.

Protestants urge that bond interest should be paid first.

This Commission has consistently held that there is an obligation on the part of a corporation to pay the interest on first mortgage bonds prior to the payment of other indebtedness, but to insist upon the payment of bond interest, as a result of which default would be made in the payment of notes secured by first mortgage bonds at the ratio of 2 to 1, would result in seriously diluting the equities of the present bondholders.

The protestant urges that the plan is financially unsound, and presents figures to show that on the basis of the company's own records and estimates, its consummation would entail a large increase in obligation without commensurate additions to the assets. Compilations along these lines have also been made by the stock and bond department of this Commission, and I am persuaded by the figures of the protestant, of the stock and bond department, and of the company itself, that its plan, as presented and predicated upon its own records and estimates is not financially sound. I refer particularly to that

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feature which would entail the capitalization of bond interest and the issue of bonds against a deficit. I will not go into details, but hereafter will present a summary which I believe will demonstrate the accuracy of the opinion herein expressed.

In this connection also the protestant expresses his concern lest the stockholder be placed at an advantage if the provisions of the plan are carried out. The applicant has expressed its intention that such should not be the case, and any concern lest the stockholder be unduly favored may be allayed by a provision in the order which will permit of the pledge of bonds at the ratio of 5 to 4 and will obligate the stockholder in case of the nonpayment of the principal or interest of his note to accept these pledged bonds in full compensation at 80 per cent of face value.

The protestant urges further that the plan is impracticable and can not afford a solution for the applicant's financial problems, that the accounts are lacking in integrity and that its affairs are inextricably involved. The protestant submitted figures based on auditing reports to indicate that the books of account do not properly show the condition of this applicant's financial affairs.

The auditing department of this Commission has been engaged in an examination of the books of Oakland, Antioch and Eastern Railway and Oakland and Antioch Railway and San Ramon Valley Railroad. This investigation has been under way for some time and has been delayed by reason of a request of the auditors of the Interstate Commerce Commission that they be allowed priority in their investigation of the books of account of these same companies. Accordingly, the auditors of this Commission deferred to those of the Interstate Commerce Commission. The inquiry by the auditors of this Commission has progressed far enough to disclose several inaccuracies in the accounting methods of this applicant. Salaries properly chargeable to operation have been charged to construction. Interest on funded debt has been improperly charged to construction. Freight earnings on company materials have been improperly added to earnings. Expense items incurred after the road began operation have been improperly charged to construction.

Mr. L. R. Reynolds, auditor of this Commission, gave testimony to the effect that he was able at this time to report discrepancies amounting to at least $150,000.00. He stated that this inquiry was not complete, and some items might be added to the total, and that the total was subject to change from explanation on the part of the company.

I am loth to pass upon this feature until the auditors have been able to complete their report. If we accept a minimum figure of

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$150,000.00, this would increase the deficit shown by the applicant to $456,774.49.

The applicant urges as an evidence of its good faith a total of four assessments levied and collected which brought to the company approximately $1,215,000.00.

As soon as the report of the auditors of this Commission has been completed, the applicant will be directed to readjust its accounts to conform with the principles as laid down in the accounting forms of the Interstate Commerce Commission and by the Railroad Commission of California.

The protestant finally urges that the financial problems of the applicant can only be solved through a system of readjustment, and suggests an issue of preferred stock, but no detail is offered in support of this suggestion.

The computation made by the intervenor, the stock and bond department of this Commission and the applicant itself and estimates submitted by the applicant lead me to the conclusion that the plan does not afford a complete solution of the applicant's financial problems.

The primary difficulty with the applicant's plan as presented to this Commission lies in the fact that it fails to differentiate between the issue of bonds which it is proposed shall go out for bond interest and those which shall be issued to refund its note indebtedness incurred for capital purposes. This inherent objection to the plan was indicated by Mr. Sinsheimer, of the stock and bond department of this Commission, in the first hearing upon this matter on June 28, 1915 (see transcript, pages 20, 22, 25 and 27). I believe this to be the fundamental consideration which should guide this Commission in making an order in this matter. A suggestion was made at the hearing as to an amortization fund on the part of the stockholders, but the applicant has presented nothing tangible in this respect.

At the same time, the applicant urges that it has reposed in its special bondholders' committee the power to abrogate the plan and to declare it inoperative at its will, and it is the intention, according to the testimony offered, that this committee should cast aside the plan in case the earnings of the road do not justify it in the belief that the railway could at the expiration of the three-year period in 1918 establish itself on a proper financial basis.

It may have been the part of wisdom in drawing up such a plan to place such power in the hands of a committee. I believe the same results may be accomplished and in a manner that may be satisfactory to the minority bondholders as well as to the majority if this Commission establishes an automatic measure by which the plan shall operate.

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In the final analysis, we have before us a railroad corporation built in good faith to serve the people embraced within the territory reaching from San Francisco Bay to Sacramento, including the first and third cities in population and the capital of the State. This road was conceived primarily for the profit that might accrue to its promoters and to its stockholders. They have been disappointed in their hope of profit, and instead, have paid assessments amounting to $1,215,000.00, and have in the operation of their enterprise incurred a deficit, which upon minimum calculations upon June 30, 1915, amounted to $456,-774.49, and which may, through the final adjustment of the accounts, be augmented.

After an operating experience of something in excess of two years, the stockholders of this railroad are confronted with a situation wherein their indebtedness and their interest obligations are beyond their ability to pay. As the result of assessments, 12,600 shares, or 12.6 per cent of the total of stock were forfeited for nonpayment. The applicant has expressed its belief that another assessment would bring still greater forfeitures with a possibility of a general refusal on the part of the stockholders to support longer the growing burden of debt. At this time also, the applicant as reported in its Exhibit No. 14, finds itself confronted with a short term or note indebtedness amounting on June 30, 1915, to $1,027,656.93. This indebtedness is secured by the pledge of $1,493,000.00 of applicant's bonds. The applicant also is confronted with accounts payable as of July 31, 1915, in the amount of $219,643.05. These amounts, totaling $1,247,299.98, are for the most part now due and payable, and the applicant is under the necessity of dealing constantly with its creditors to whom it is thus obligated.

In addition, the Oakland, Antioch and Eastern Railway has an indebtedness of $317,500.00 of four-year convertible gold notes. These notes are secured by $544,000.00 of applicant's bonds and fall due February 1, 1918.

With this condition of pressing indebtedness and with earnings which are far below its ordinary interest requirements, the applicant is faced with the alternative of receivership or a readjustment of its finances on a temporary basis pending a demonstration of its earning capacity.

The company is unable to obtain funds from the market generally, but is obliged to appeal to its stockholders and its bondholders. In this appeal to its stockholders, it proposes that these stockholders shall eventually purchase Oakland, Antioch and Eastern bonds at 80 per cent of their face value. The amount of bonds thus proposed to be sold to the stockholders is estimated at $327,780.00. The stockholders have been called upon to advance $262,200.00 and enough have signed these agreements to signify a willingness to subscribe $236,040.00.

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As the bonds of the Oakland, Antioch and Eastern Railway were selling on the market at $400.00 per bond, at the time these signatures were obtained, the applicant asserts that these stockholders are in reality contributing one-half of this amount—$118,020.00 as an assessment in fact, if not in form.

The applicant asserts also that, in its proposal to issue $866,250.00 of its bonds to its bondholders on the basis of 80 per cent of their face value, it is also asking these bondholders in effect to assess themselves as to one-half of this amount. The applicant states that its bondholders and stockholders are willing to make this sacrifice to protect the interest they now have in its property.

I have heretofore stated that I could not recommend to this Commission that it authorize bonds to be issued by this applicant for the payment of bond interest. If, however, the stockholders and bondholders of this railway desire, or are willing, to make these sacrifices and to contribute these sums to this property in an effort to assist it to discharge in part or in whole its present pressing note and account indebtedness and thus to release the bonds pledged as security for these notes, I believe, in so far as these notes and accounts represent proper capital indebtedness, they should be permitted to do so.

It is not within the province of this Commission to say to the stockholders or the bondholders that they must do so in the fashion here proposed. This Commission has no such authority, but if the bondholders and the stockholders come forward in such substantial majorities, as are here shown, and declare a willingness to sacrifice a total of $510,600.00 for the benefit of this enterprise, I do not believe that this Commission should forbid them. If any of the stockholders or bondholders decline to make such a sacrifice as here proposed that is their privilege and their right, and it is not within the province of this Commission to declare that they must make the sacrifice.

I believe, however, that any arrangement which may be made by which the stockholders or bondholders take these bonds of the applicant should be in such terms as not to injure the minority stockholders and bondholders. It is not enough to say that they have their rights under the trust deed. Provision should be made for keeping the opportunity open for minority bondholders to participate on the same basis as the majority. This matter will be covered in the order recommended.

It is proper before concluding this opinion to present the arithmetical calculations which have led me to believe that the figures of the applicant, the protestant, and the stock and bond department of this Commission establish conclusively that the entire plan, as embraced in the various agreements presented by the applicant would lead to a

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curtailment of the floating debt in an amount entirely disproportionate to the great increase in the bonded debt.

The applicant has estimated its gross operating revenues as follows:

1915	$594,698 90
1916	713,638 68
1917	820,684 48

It estimates also that its operating expense for each of those three years will remain at $420,000.00.

In these calculations I have assumed these figures, however, subject to change I may believe them to be. On this basis, and on the applicant's own submission, the result of its plan, if carried to completion through the three-year period, would result in a reduction of the floating indebtedness by approximtaely $549,000.00, and an increase in the bonded indebtedness by approximately $1,195,000.00. The calculations made by the protestant on the same basis of earnings assumed by the applicant indicate a reduction of the floating indebtedness by approximately $421,000.00 and an increase in the bonded indebtedness by approximately $1,166,000.00.

In the compilations, as they may be worked out from the figures and estimates submitted, the applicant's proposal would entail, according to its own submission, an increase of approximately $425,000.00 in its total interest bearing indebtedness. There is practically no dissent from the view that the plan from the estimate submitted would result in an indebtedness augmented by a sum in excess of $400,000.00.

During 1918, the company will be obliged to meet obligations as follows:

Interest on $2,500,000 Oakland, Antioch and Eastern bonds	$125,000 00
Interest on $2,000,000 Oakland and Antioch bonds	100,000 00
Interest on $100,000 San Ramon Valley bonds	6,000 00
Interest on $1,149,216 Oakland, Antioch and Eastern bonds to be issued under plan	57,460 80
Interest on $317,500 gold notes, assuming they will be extended	19,050 00
Interest on floating debt	51,775 62
Total	$359,286 42
Taxes estimated	30,000 00
Total interest and taxes	**$389,286 42**

Without allowance for sinking funds, amortization of discounts and depreciation, and assuming that the company can operate at a ratio of 60 per cent (which is far lower than the average), it would be obliged to earn $900,000.00 during 1918, or approximately $9,000.00 per mile, in order to meet the above charges.

On an operating ratio of 66⅔ per cent the applicant would be required to earn $1,170,000.00 gross, and on a 70 per cent operating ratio, $1,300,000.00 gross to meet its fixed charges.

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The computations make no allowance for depreciation or amortization, nor do they take into account the pressing note obligations and the open accounts. They assume, moreover, an extension of the collateral trust obligations.

Estimates are always uncertain and should not be used as a basis of reliance when an opportunity is afforded to obtain exact operating figures. An injustice might be worked by an estimate too low as well as too high. Accordingly, the order which I propose to recommend will enable the applicant to take full advantage in its financial readjustment of any benefit that may come from increased earnings. At the same time it will not commit it to a financial program which might add to the company's burdens in case its earnings do not reach the estimates. I believe, therefore, that the applicant may be authorized to use its net earnings, as far as its bondholders consent, for the discharge of its short term capital indebtedness.

In recommending an order in this matter I have in mind that this Commission should authorize bonds to enable the applicant to refund its proper capital note indebtedness, particularly in so far as such indebtedness is secured by pledge. It will not be necessary for the applicant to use bonds other than those now in pledge.

The order, I believe, should provide for cancellation of any authority heretofore given to issue bonds which has not been exercised.

Accordingly, I submit the following form of order:

ORDER.

Oakland, Antioch and Eastern Railway having applied to this Commission for authority to issue $867,000.00 of its first mortgage bonds, for authority to pledge $525,000.00 of said bonds, to issue $328,000.00 of said $525,000.00 of first mortgage bonds, and to issue $262,200.00 in promissory notes,

And a hearing having been held and it appearing that the bonds and notes which may be issued under the terms of this order are not in whole or in part chargeable to operating expenses or to income,

It is hereby ordered as follows:

That Oakland, Antioch and Eastern Railway Company be granted authority and it is hereby granted authority to issue $867,000.00 of its first mortgage bonds, to issue $328,000.00 of first mortgage bonds, to issue $262,200.00 face value of promissory notes, all upon the conditions hereinafter set out and not otherwise:

1. Before any of the bonds or notes herein authorized to be issued shall be issued, the applicant shall submit to this Commission a list of its notes and accounts payable which may represent capital expenditure with a detailed statement and explanation of such capital expenditure.

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2. The bonds herein authorized to be issued may be sold to applicant's bondholders or stockholders for cash, or may be issued in lieu of bond interest earned and used by the company for capital purposes, at not less than 80 per cent of their face value plus accrued interest.

3. The proceeds derived from the issuance of the bonds and notes herein authorized to be issued shall be used solely for the purpose of discharging such of applicant's indebtedness, represented by its promissory notes or its accounts payable as this Commission shall have found by supplemental order to have been incurred for proper capital expenditures.

4. The notes herein authorized to be issued in the sum of $262,200.00 may be issued by the applicant to its stockholders for cash equivalent to the face value of said notes.

5. The notes herein authorized to be issued shall mature not later than January 1, 1918, and shall bear interest not to exceed 6 per cent per annum.

6. The $328,000.00 of bonds herein authorized to be pledged by the applicant may be pledged as collateral security for the $262,200.00 of notes herein authorized to be issued, provided that said pledge shall be made upon the condition that the stockholder is obligated in case of the nonpayment of the principal or interest of his note to accept these pledged bonds at 80 per cent of face value in full compensation.

7. The applicant shall submit to this Commission monthly statements of its earnings and operating expenses and shall report to this Commission monthly the disposition of such net earnings as shall remain after the payment of such expenses.

8. This order is made upon the condition that provision be made for participation at any time by bondholders who do not sign the agreement upon the same basis as the bondholders who do sign the agreement.

9. The applicant shall report to this Commission the numbers of the bonds now pledged as collateral security for its note indebtedness.

10. The bonds hereby authorized to be issued, shall be only such bonds as are now pledged as collateral security for the applicant's note indebtedness.

11. The bonds herein authorized to be pledged as collateral security for the $262,200.00 of notes shall be pledged in such ratio that the face value of the bonds pledged shall at no time be greater than 125 per cent of the face value of the notes for the security of which they shall have been pledged.

12. None of the bonds herein authorized to be issued and none of the notes herein authorized to be issued shall be issued until this Commission shall have issued a supplemental order finding that the applicant has complied with the conditions herein set out, said supplemental

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order to provide such other conditions as this Commission may determine.

13. Oakland, Antioch and Eastern Railway shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds and notes hereby authorized to be issued, and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds and notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

14. The authority herein granted to issue bonds and notes is conditioned upon the payment by the applicant of the fee prescribed in the Public Utilities Act.

15. The authority herein granted shall apply to such bonds or notes as shall have been issued on or before January 1, 1918.

It is further ordered that the authorizations heretofore given to Oakland, Antioch and Eastern Railway to issue or pledge its bonds be canceled and annulled as to such bonds as may not on this date have been issued under said orders.

It is further ordered that the applicant shall, within sixty days, submit to this Commission for its approval a readjustment of its books of account to the end that such books of account shall show the true financial condition of this applicant.

It is further ordered that in such authority as has been given herein to the applicant to issue bonds and to issue notes, this Commission does not approve directly, indirectly or by implication, the agreements submitted by this applicant in connection with the application herein as Exhibits "A" and "B," the order as herein made being specifically without reference to said agreements.

On or before January 1, 1918, the applicant shall report to this Commission a plan for the readjustment of its finances to meet its maturing obligations and to place it upon a permanent basis to meet its financial necessities.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of November, 1915.

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DECISION NO. 2914.

MONTAGUE CREAMERY

vs.

WELLS FARGO AND COMPANY.

Case No. 825.

Decided November 20, 1915.

Complainant attacks the rate of defendant company on butter from Montague to San Francisco, contending that the present rate of $1.50 per 100 pounds is excessive and unjust and, after a review of the evidence tendered and a comparison of like rates for equal distances, the present rate is held to be excessive and the following rates established to become effective within twenty days: Butter, Montague to San Francisco, less than 1,000 pounds, $1.25 per 100; 1,000 pounds, but not over 1,999 pounds, $1.15 per 100; 2,000 pounds or over, $1.05 per 100; provided that the charge for a lesser quantity shall not be more than the charge for a greater quantity.

B. K. Collier, for Complainant.

Alfred Sutro, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

Montague Creamery, a corporation, is engaged in the business of manufacturing butter at Montague; its product is transported by the defendant carrier from Montague to San Francisco at an any-quantity rate of $1.50 per 100 pounds. Complainant alleges that the present any-quantity rate on butter is unlawful and excessive, in that it exceeds the defendant's any-quantity rates in effect between other points in California for similar distances, and asks that the Commission prescribe rates for the future which are not in excess of the rates contemporaneously in effect between Los Angeles and Keyes, Modesto and Watsonville. The following table shows the "open" or any-quantity rates and the distances between the points aforementioned; also between San Francisco and Los Angeles and Tehachapi:

Butter Rates in Cents Per 100 Pounds.

Distance	Between	and	Open or any quantity	Lots of 1,000 pounds and less than 2,000 pounds	Lots of 2,000 pounds and over
350.1	Montague	San Francisco	150		
349.2	Tehachapi	San Francisco	125		
470.6	Los Angeles	San Francisco	125		
361.0	Keyes	Los Angeles	125	115	105
368.7	Modesto	Los Angeles	125	115	105
374.6	Watsonville	Los Angeles	125		

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The distances are to be found in Southern Pacific Company's Distance Table No. 420-B, C. R. C. No. 1857, over which line the defendant operates. It will be noted that with one exception the distances range from 10.9 miles to 120.5 miles in favor of the points complained of. The present rates between Montague and San Francisco became effective March 15, 1914. Prior to this date the rate on butter, voluntarily established by carrier between the same points, was $1.75 per 100 pounds and the rates, likewise voluntarily established between the other points indicated, were the same as at present. From this it will be seen that the present "open" or any-quantity rate between Montague and San Francisco is 25 cents per 100 pounds higher than between the other points shown, and in the absence of quantity rates the disparity varies from 35 cents to 45 cents per 100 pounds, the differentials prior to March 15, 1914, being considerably in excess of these figures.

The records disclose that complainant's individual butter shipments to San Francisco exceed 1,000 pounds per shipment and that the total tonnage from Montague will approximate 200,000 pounds annually.

Defendant, in its answer, denies that the rate of $1.50 per 100 pounds on butter between Montague and San Francisco is excessive and unlawful, but on the contrary avers that where similar traffic conditions exist the rate is just and reasonable. During the hearing at San Francisco, October 4, 1915, counsel laid great stress upon the fact that, as the present rate of $1.50 per 100 pounds between Montague and San Francisco was established by the Commission, it follows that the rate is just and reasonable and therefore should not be disturbed.

We desire in this connection to quote from our Decision No. 2149, dated February 11, 1915, as follows:

> "With a complete readjustment of all the express rates and the substitution of an entirely new system of rate making, some conditions are bound to arise which require modification from time to time.
>
> * * * It is expected that such adjustment as will be necessary from time to time will be made by the defendant without contest, it appearing that such adjustment can be made and the carrier be in the same position as was contemplated under the original order of the Commission."

While the Commission considered defendant's entire rate structure collectively in prescribing rates for the future, it at the same time drew attention to the fact that some of the individual rates would probably be out of line and require adjustment.

A number of exhibits were introduced in support of defendant's contention that the rate complained of is just and reasonable. Exhibits "A," "B," and "C" undertake to show that as the average "open" or any-quantity express rate per mile on butter between certain points

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is .0046 cents, the rate of .0043 cents per mile between Montague and San Francisco is not out of line. The distances between the points specified range from 78 to 369 miles and the rate per mile from .0034 cents to .0059 cents. These exhibits can be given but little consideration, for the reason that the rate per mile for shorter distances is greater than for longer distances; consequently an average rate is not comparable. Only four points shown are of substantially the same distance as the distance under consideration, and if the average rate per mile between these points is used as a basis, the open rate between Montague and San Francisco would be in excess of $1.25 per 100 pounds.

Defendant's Exhibit "D" purports to indicate that by reason of density of population the territory between Los Angeles and Modesto, inclusive, and between Los Angeles and Watsonville, inclusive, is entitled to lower rates on butter than is the territory between Montague and San Francisco, inclusive. It shows that between the last named points there are two routes, one via Tehama, Willows and Davis; the other via Tehama, Chico, Roseville, Sacramento and Davis. The former route passes through ten counties, the population of which is 800,228, or an average population per county of 80,022. The latter route passes through thirteen counties, the population being 915,038, or an average population of 70,387 per county. Between Modesto and Los Angeles there are two routes, one passing through Fresno, Mojave and Saugus, the other through Fresno, Mojave and San Bernardino, via the Southern Pacific Company and via The Atchison, Topeka and Santa Fe Railway Company, respectively, the former route serving seven counties with a total population of 698,987, or an average population of 99,855, the latter route serving nine counties, the population of which is 771,923, an average of 85,769 per county. Between Watsonville and Los Angeles, via the Southern Pacific Company, six counties are served, the total population being 619,885, or an average of 103,314 per county. The exhibit, instead of supporting defendant's contention, appears to have a contrary effect. While the average population per county is greater between Los Angeles and Modesto and Los Angeles and Watsonville than between Montague and San Francisco, the fact remains that the total population served between the latter points, via either route, is considerably in excess of the number of persons served between the other points.

Defendant's Exhibit "E" shows the production of butter in counties served by the routes mentioned in the preceding exhibit, for the years ending September 30, 1913 and 1914, and indicates that a greater quantity was produced between Los Angeles and Modesto and Los Angeles and Watsonville than between Montague and San Francisco. Further, that the production of butter during the year 1914 exceeded

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the year 1913. This is illuminating, but in no way tends to prove that the tonnage transported between Montague and San Francisco is less than between the other points between which any-quantity and quantity rates are named.

Exhibit "F" demonstrates that twice as much butter was transported from Montague to San Francisco from November, 1914, to June, 1915, inclusive, as for a similar period during years 1913 and 1914, and it is urged that upon this showing butter is freely moving under the existing rate and is therefore reasonable. This exhibit, as it stands, is not properly compiled. If it is intended to show that a greater tonnage moved under the present rate of $1.50 per 100 pounds, effective March 15, 1914, than under the rate of $1.75 per 100 pounds previously in effect, data should have been submitted accordingly; however, it would appear from the exhibit that 16,900 pounds moved under the old rate from November, 1913, to February, 1914, inclusive, and 27,753 pounds under the new rate during the same months, years 1914 and 1915, an increase in tonnage of 10,853 pounds. Is it to be admitted that because of the increase in tonnage the present rate is reasonable? Might it not be due to the fact that the rate had been reduced? It is found that the additional traffic during the latter period increased the defendant's revenue $120.55, notwithstanding the lower rate was in effect, and suggests the question: Does a reduction in rate necessarily diminish a utility's income? May it not be possible that a reduction in rate will increase the amount of business, and therefore the earnings?

The transportation conditions surrounding butter shipments between Montague and San Francisco are no different than between the other points shown in the table; therefore, if shippers at producing points in the one territory are accorded any-quantity and quantity rates, it is unreasonable to charge shippers at producing points in the other territory different rates for like distances, under similar circumstances and conditions.

From the facts of record in this case, I find that the rate on butter between Montague and San Francisco is unjust and unreasonable, and should not exceed the following:

Quantity	Rate per 100 pounds
Less than 1,000 pounds	$1 25
1,000 pounds, but not over 1,999 pounds	1 15
2,000 pounds and over	1 05

Provided that the charge for a lesser quantity shall not be more than the charge for a greater quantity.

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I submit herewith the following form of order:

ORDER.

The Montague Creamery having filed a complaint with this Commission, alleging that the rates on butter between Montague and San Francisco, of Wells Fargo and Company, are excessive and unlawful, and a public hearing having been held, and the Commission being fully apprised in the premises, and basing its order upon the findings of fact which appear in the opinion preceding this order,

It is hereby ordered that Wells Fargo and Company publish and file with the Commission, on or before twenty days from the date of service of this order, the following rates on butter between Montague and San Francisco:

Quantity	Rate per 100 pounds
Less than 1,000 pounds	$1 25
1,000 pounds, but not over 1,999 pounds	1 15
2,000 pounds and over	1 05

Provided that the charge for a lesser quantity shall not be more than the charge for a greater quantity.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of November, 1915.

DECISION NO. 2915.

IN THE MATTER OF THE APPLICATION OF P. T. DURFY AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR APPROVAL OF SALE OF REAL PROPERTY.

Application No. 1959.

Decided November 20, 1915.

REPORT OF THE COMMISSION.

P. T. Durfy, who owns and operates a water system in and adjacent to the town of Sherman, Los Angeles County, State of California, having applied to this Commission for authority to sell to the board of public service commissioners of the city of Los Angeles, certain lands and rights of way in and through the water bearing properties

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of P. T. Durfy in Franklin Canyon, located northwesterly of said town of Sherman; and it appearing that the granting of this application will not interfere with the development or production of water on said property for the purposes of the water utility operated by said P. T. Durfy, and the exact property to be conveyed being described in a form of conveyance attached to the application in this proceeding and marked Exhibit "A," as follows:

"All that certain parcel of land situate in the county of Los Angeles, a parcel of land in State of California, described as follows: A parcel of land in square form containing two acres, being a portion of the north half of the northeast quarter of the northwest quarter of section 1, township 1 south, range 15 west, San Bernardino meridian, better known and described as follows, to wit:

Lying westerly and adjacent to a certain two-acre parcel of land in square form described and recorded on page 85, of Book 4931, of Deeds, Records of Los Angeles County, and in the northerly line of which is the San Bernardino base line and the easterly line of which is the westerly line of the above described two acres, recorded on page 85, of Book 4931, of Deeds, Records of Los Angeles County;

Also the permanent easement and right of way for the purpose of constructing, operating, enlarging and maintaining pipes or conduits for the conveyance of water, in, over, along and across a strip of land 75 feet in width, in sections 1 and 2, the center line of said strip is described as follows, to wit:

Commencing at a point on the San Bernardino base line, which is 893 feet easterly along said base line from the northwest corner of section 1, township 1 south, range 15 west; thence south 22°, 55′ west, a distance of 49 feet; thence by a curve to the right with a radius of 179.19 feet for a distance of 50.78 feet; thence south 39°, 10′ west, for a distance of 45.00 feet; thence by a curve to the right with a radius of 716.23 feet for a distance of 154.17 feet; thence south 51°, 30′ west, for a distance of 92.32 feet; thence by a curve to the left with a radius of 358.17 feet for a distance of 124.17 feet; thence south 31°, 38′ west, for a distance of 447.35 feet; thence by a curve to the left with a radius of 716.23 feet for a distance of 145.59 feet; thence south 19°, 59′, 10″ west, for a distance of 429.53 feet; thence by a curve to the right with a radius of 716.23 feet for a distance of 94.90 feet; thence south 27°, 34′, 40″ west, for a distance of 317.87 feet; thence by a curve to the left with a radius of 1,432.41 feet for a distance of 128.82 feet; thence south 22°, 25′, 30″ west, for a distance of 303.42 feet; thence by a curve to the right with a radius of 1,432.41 feet for a distance of 118.82 feet; thence south 27°, 10′, 40″ west, for a distance of 254.59 feet; thence by a curve to the left with a radius of 238.84 feet for a distance of 196.31 feet; thence south 19°, 56′, 10″ east, for a distance of 164.88 feet; thence by a curve to the right with a radius of 179.19 feet for a distance of 87.71 feet; thence south 8°, 07′, 50″ west, for a distance of 744.11 feet; thence by a curve to the left with a radius of 954.96 feet for a distance

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of 161.28 feet; thence south 1°, 32′, 50″ east, for a distance of 543.16 feet; thence by a curve to the left with a radius of 716.23 feet for a distance of 232.47 feet; thence south 20°, 08′, 40″ east, for a distance of 788.05 feet, more or less, to a point on the south line of section 2, township 1 south, range 15 west, San Bernardino meridian, and distant 126.9 feet, more or less, westerly along the south line of said section 2, township 1 south, range 15 west, San Bernardino meridian, from its southeast corner, excepting such portions of said strip of land as are included in the above described two-acre parcel of land.

Together with all necessary and convenient means of ingress and egress to and from said right of way for above mentioned purposes."

And it appearing to the Commission that this is not a case in which a public hearing is necessary and that the application should be granted,

It is hereby ordered that the application in this proceeding be and the same hereby is granted.

Dated at San Francisco, California, this 20th day of November, 1915.

Decision No. 2916.

IN THE MATTER OF THE APPLICATION OF SAN GABRIEL VALLEY WATER COMPANY TO FIX AND INCREASE THE RATES TO BE CHARGED FOR DOMESTIC AND IRRIGATION WATER.

Application No. 1497.

GRANADA PARK WATER COMMITTEE

vs.

SAN GABRIEL VALLEY WATER COMPANY.

Case No. 782.

Decided November 20, 1915.

San Gabriel Valley Water Company, operating a water distributing system in the city of Alhambra and various other portions of Los Angeles County, applies for permission to increase its present rates for water for domestic and irrigation purposes. Complainant, a mutual distributing company, attacks the wholesale rate of $1.00 per 1,000 cubic feet charged to it by defendant company and petitions the Commission to establish a rate of 56½ cents per 1,000 cubic feet.

In establishing a rate for this system the questions involved are divided as follows: (1) Value of property; (2) maintenance and operating expenses; (3) rate schedule. In finding a value for these properties it is held that though no

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allowance may be made for paving over mains, it is proper to increase the depreciation annuity sufficiently to cover additional costs of replacing pipes through pavement. The water company contends that it is entitled to a return on the value of pipe donated to it and after a review of this subject it is held that as the title to such pipe now rests in the company, it is entitled to a return on the fair value thereof. The sum of $378,597.00 is found to be the reasonable cost new of the physical properties of this water company, exclusive of real estate.

As regards water values, it is held that the maximum amount pumped at any particular period is not a fair criterion of the amount of water supply necessary, neither can the average summer use be considered, but that the amount which can be pumped, together with that available in storage which will tide the company over the longest period of greatest demand possible with existing facilities, shall carry the greatest weight. After careful consideration of all elements going to make up the value of land with its appurtenant water, a value of $125,520.00 is reached, which item, together with the value found for physical properties, additional overhead, etc., brings the total reasonable cost new of this system to $504,117.00.

Held, Basing a return on the values found, together with operating expenses, maintenance, depreciation, etc., that the present rates of San Gabriel company are inadequate, though a rate based on a full return on the value of these properties would, in certain districts, prove excessively burdensome. The following schedule established to become effective December 1, 1915: Domestic service, minimum $1.00 per month for 600 cubic feet; 600 to 5,000 cubic feet, 12 cents per 100; over 5,000 cubic feet, 10 cents per 100. Irrigation per 1,000 cubic feet, 50 cents, provided that water served to mutual distributing associations shall be paid for in a lump sum and such a group considered as one consumer.

Haas & Dunnigan and *S. M. Haskins*, for San Gabriel Valley Water Company.

Alfred Barstow, for City of Alhambra.

E. J. Rhoades, for Alhambra Chamber of Commerce.

John W. Kemp, for Granada Park Water Committee.

Earl Wakeman, for City of San Gabriel.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

It was stipulated by all parties in this proceeding that the complaint of the Granada Park Water Committee, hereafter referred to as complainant, and the application of the San Gabriel Valley Water Company, hereafter referred to as the water company or the applicant, be consolidated for hearing.

The application in this proceeding was filed January 15, 1915. Applicant alleges in effect that the rates fixed by the board of trustees of the city of Alhambra are inadequate and unjust and do not return to the utility the necessary cost of maintenance, operation, annual depreciation and a fair return upon its investment within the city. Applicant further alleges that the schedule of rates in effect in San Gabriel, San Marino, Oak Knoll (Pasadena), Oak Knoll (San Marino),

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Rosemead and Los Angeles County do not produce sufficient revenue to return to the company the annual charges on the various plants supplying the municipalities with water.

Complainant filed its complaint on February 17, 1915. Complainant is an association formed for the purpose of purchasing and distributing water to its members in the unincorporated town of Granada Park, Los Angeles County. Complainant alleges in effect, (1) that its water system is connected with the San Gabriel Valley Water Company's system; (2) that it maintains and operates the distribution system in Granada Park; (3) that the water company has been and is charging at the rate of $1.00 for each 1,000 cubic feet of water delivered to complainant; (4) that complainant has been discriminated against in rates.

Complainant asks that the water company be ordered to deliver water at the wholesale rate of 56½ cents per 1,000 cubic feet, and return to complainant the difference between the amount collected for the past five years and the rate that it here asks to have established.

The schedule of rates which are in effect follows:

In Alhambra, San Gabriel, San Marino and Los Angeles County.

DOMESTIC.

1,300 cubic feet or less	$1.25 per month
Excess	7½ cents per 100 cubic feet
Flat rate, minimum	$1.25 per month

IRRIGATION.

56¼ cents per 1,000 cubic feet or fraction.

These rates are also in force in Rosemead with the exception of the rate for irrigation water which is 38½ cents per 1,000 cubic feet or fraction.

In Oak Knoll (Pasadena and San Marino).

DOMESTIC.

Flat rate, minimum	$1.00 per month
500 cubic feet or less	$1.00 per month
Excess	10 cents per 100 cubic feet

IRRIGATION.

38½ cents per 1,000 cubic feet or fraction.

Applicant asks that rates be established uniformly for all its territory which will return to it, annual depreciation, maintenance and operation, and 8 per cent on appraisal of Mr. J. B. Lippincott, engineer for the company. The rates to yield this return are estimated by applicant as follows:

DOMESTIC.

500 cubic feet or less	$1.25 per month
Excess	21.4 cents per 100 cubic feet

IRRIGATION.

60 cents per 1,000 cubic feet or fraction.

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The city authorities in Alhambra and Pasadena fixed the rates in these municipalities, but the rates for all other portions of the system were established by the water company and have been continued in force without any suggestion of an increase before this time.

The water system was inaugurated about 1875 by D. B. Wilson who incorporated the Lake Vineyard Land and Water Association. In 1883, the Alhambra Addition Water Company was organized and purchased, extended and operated the system. In 1907 the San Gabriel Valley Water Company was organized and purchased the plant of the Alhambra Addition Water Company. The Huntington Land and Improvement Company subdivided the Oak Knoll tract in Pasadena and in San Marino in 1906, and constructed a water system as an adjunct of its real estate promotion business.

San Gabriel and San Marino are new cities and were incorporated subsequent to the effective date of the Public Utilities Act. These cities are sparsely settled and the utility serving them must necessarily have a large investment per consumer. The Huntington Land and Improvement Company subdivided and marketed practically all the real estate in these cities and also in Rosemead. This company is also the owner of a majority of the stock of the San Gabriel Valley Water Company.

In Rosemead the water system is still owned by the Huntington Land and Improvement Company which leased it to the water company for an annual rental which is agreed upon each year, and which for the year 1914 was $300.00. The Oak Knoll system is also owned by the Huntington Company and leased to the water company for an annual rental which for 1914 was $4,000.00.

This system naturally divides into five units practically separate and complete, namely, Alhambra, San Marino and San Gabriel, Los Angeles County, Oak Knoll (Pasadena), Oak Knoll (San Marino) and Rosemead.

The properties of the water company in these divisions consist of:

Alhambra.

9 wells located in Kewen Canyon.
Pumping plant, comprising centrifugal pumps, air compressor, motors, etc.
3 small reservoirs, transmission and distribution system, lands and water rights.

San Marino and San Gabriel.

3 wells, one reservoir, transmission mains and distribution pipes in each city.
Lands and rights.

Los Angeles County.

One well near San Marino.
60,000 gallon redwood tank, distribution system, lands and rights.

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Oak Knoll.

One well in Oak Knoll, steel tank of 50,000 gallons capacity, distribution system, lands and rights.

Rosemead.

One well, concrete distributing reservoir, distribution system, lands and rights.

Hearings were held in this proceeding in Los Angeles on May 11, 12 and 13, 1915, and subsequently briefs were filed.

It developed in evidence that complainant, Granada Park Water Committee, entered into a contract to pay $1.00 per 1,000 cubic feet for water at the time of the construction of its distributing system, which was prior to the effective date of the Public Utilities Act.

In computing the rate to be established, the issues involved have been considered in three principal divisions:

1. Value of the property.
2. Maintenance and operation expenses.
3. Rate schedule.

These will be taken up in the order named.

1. VALUE OF THE PROPERTY.

The elements going to make up this plant are rather complex and for the sake of convenience have been subdivided as follows:

(1) Physical properties.
(2) Lands.
(3) Intangibles.

These will be considered in turn.

(1) Physical Properties.

Appraisals were presented by J. B. Lippincott and E. R. Bowen for the water company, C. E. Hewes, city engineer, for the city of Alhambra, and by the hydraulic engineers of the Commission.

Hewes' appraisal refers only to such properties as are used in serving the city of Alhambra.

The following is a comparative tabulation of these appraisals:

Location	Estimated cost new			Estimated cost less depreciation		
	Water company	City of Alhambra	Commission's hydraulic engineers	Water company	City of Alhambra	Commission's hydraulic engineers
Alhambra	$366,723	$282,077	$284,018	$311,075	$229,338	$197,434
Los Angeles County	14,619	----------	14,772	12,304	----------	10,377
Rosemead	35,900	----------	29,907	32,183	----------	23,124
San Marino and San Gabriel	90,268	----------	77,278	83,561	----------	60,917
Oak Knoll, Pasadena and San Marino	60,089	----------	52,681	53,340	----------	42,942
	$567,599	----------	$458,656	$492,613	----------	$334,794

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In the appraisals by the water company and by the city of Alhambra the equal annual payment method of depreciation was used. That submitted by the Commission's hydraulic engineers was computed by the straight line method. The unit costs applied by these engineers check so closely that I shall not discuss them further. The difference between the appraisals submitted is due almost entirely to the difference in overhead percentage applied.

The Commission's hydraulic engineers testified that from the sums reported above they proposed to deduct certain sums for pipe donated to the water company, which is operated at present to only a small percentage of its capacity, and for services and meters paid for by consumers.

It was admitted by the attorneys for the water company that pavement over mains which were installed prior to the construction of the pavement does not add to the value of the mains and is not a proper item to be included in an appraisal for rate making purposes. This matter was discussed by Commissioner Thelen in the decision in Application No. 1141 (Dec. No. 2279): *In the matter of the application of Marin Municipal Water District for an order of the Railroad Commission fixing and determining the just compensation to be paid to the Marin Water and Power Company for its lands, properties and rights*, and by Commissioner Edgerton in the decision in Application No. 1531 (Dec. No. 2586): *In the matter of the application of the Peoples Water Company for reorganization.* Although the capital cost of pavement over mains is not included, the depreciation annuity may properly be increased to include a sum sufficient to cover the additional expense necessary to ultimately replace the pipe through pavement. An estimate of the amount to be included in the sinking fund for this purpose was submitted by the Commission's engineers as follows:

Division	6 per cent sinking fund annuity
Alhambra	$954 00
San Gabriel and San Marino	272 00
Los Angeles County	33 00
Oak Knoll	123 00
Rosemead	42 00
Entire system	$1,424 00

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The estimated cost and sinking fund annuity involved in the meters and services paid for by the consumers are as follows:

Location	Estimated cost new		Annuity at 6 per cent	
	Services	Meters	Services	Meters
Alhambra	$15,383 00	$24,164 00	$416 00	$653 00
Los Angeles County	299 00	553 00	8 00	15 00
Rosemead	737 00	2,326 00	20 00	63 00
San Marino and San Gabriel	1,119 00	2,812 00	30 00	76 00
Oak Knoll (Pasadena and San Marino)	1,481 00	3,939 00	40 00	106 00
Totals	$19,019 00	$33,794 00	$514 00	$913 00

The company from its inception up to July, 1913, charged the prospective consumers for service connections and meters at prices ranging from $21.00 for a one-inch connection and ⅝-inch meter to $85.00 for a two-inch connection and a two-inch compound meter. Subsequent to July 1, 1913, the city of Alhambra passed an ordinance forbidding the water company to require the consumers to pay for the meters, but did not forbid the service connection charge which is still being collected by the water company. It is claimed by the water company that the amounts charged are the average cost, installed, of these services and meters. The statement was made by the superintendent of the water company that this sum was collected from the prospective consumer as payment for the meter and service and not as a condition precedent to extending service. From the evidence it appears that the intention of the parties interested was that the sum paid by the consumer was for the service connection, that is, the consumer purchased the service connection, but because he has no franchise he can not maintain property of this nature in the streets. That the consumer can not so use his property is no reason why the title automatically passes to the water company and later adds to the burden on that same consumer in an appraisal for rate making purposes. It is assumed, however, that the economical operation of the system requires that the water company maintain and replace the service connections and meters and a sum sufficient for this purpose has been included in the annual charges. Attorneys for the water company in their reply brief contend that donated pipe has become a part of the system of the company. They contend that as such donated pipe was not given to the company by the consumers at large, if the company is not allowed a return upon this donated property it would in effect be saying that the company may not receive such presents, and that the consumers of the system are entitled to all individual donations made to the company, and that this is manifestly unreasonable.

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The same argument would apply to the pipe donated to the company by real estate concerns seeking to exploit certain subdivisions. There is a distinction between services and meters on the one hand and such mains and laterals on the other, in that the services and meters were paid for by the consumers generally. Thus the attorneys for the water company draw a distinction between services and meters and donated pipes, and in that contention it appears to me they present an argument for the exclusion of services and meters, paid for by consumers, in an appraisal made for the purposes of this proceeding.

Whitten on "Valuation of Public Service Corporations," Vol. 1 at page 163, quotes as follows:

> "California Supreme Court case of the *San Diego Water Company* vs. *City of San Diego*, 118 Cal. 556, 50 Pac. 633, 639, decided October 9, 1897. * * * The opinion of Judge Van Fleet, concurred in by two other judges, contains the following in regard to services: 'It may be added that when, as it appears, portions of the company's expenses are specifically repaid by the consumers, such expenses should be eliminated from the computation. This will apply at least to the taps put in by private consumers.' "

The Wisconsin Railroad Commission in *City of Washburn* vs. *Washburn Water Works Co.*, 6 W. R. C. R. 74, 92, decided December 6, 1910, says:

> "It is well understood that, as a matter of equity, the commission does not include services paid for by consumers in the valuation of public service property for the purpose of establishing rates."

This Commission held that meters and services paid for by consumers are not proper elements to be allowed for rate making purposes in the case of *City of Eagle Rock* vs. *Eagle Rock Water Company*, Vol. 3, C. R. C. 1054.

In Decision No. 2689 in Case No. 683, *In the matter of the practice of water, gas, electric and telephone utilities requiring deposits before rendering service*, decided August 12, 1915, Commissioner Thelen makes the following statement in regard to the meters that were paid for by consumers:

> "While not formally passing on the question, I desire to draw attention of water, gas and electric utilities to the question whether it would not be well for them to purchase from their consumers such meters, regulators and transformers *as are now the property of the consumers.*"

At the hearing it was contended by the attorney for the city of Alhambra that all donated pipe should be excluded as an element of

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value for the purpose of this proceeding, which the city engineer estimated to have a value of $64,459.00. This pipe was installed and paid for by real estate companies to serve particular sections in which they were interested and later deeded to the water company. The Commission's hydraulic engineers submitted a list of the pipe lines so donated which are serving only a small number of consumers. These were excluded in their appraisal because it was deemed that it would not be just to make the consumers at large bear the expense of these extensions. The estimated cost new of the pipe excluded is:

Alhambra	$11,517
San Marino and San Gabriel	15,204
Los Angeles County	525
	$27,246

Although these pipes were expressly donated to the company, they are now the property of the water company and as such the company is entitled to a return on their fair value. On the other hand, the use value is not measured by an estimate of cost for there are a number of these pipe lines that have only one consumer for a large investment, and it is obviously unfair to permit it to become a burden upon the remainder of the system.

I find as a fact that the following would be the reasonable cost new of the physical properties of this company exclusive of real estate:

Alhambra	$232,954
San Marino and San Gabriel	58,143
Los Angeles County	13,395
Oak Knoll	47,261
Rosemead	26,844
	$378,597

I desire to point out that while I find the above is a fair sum to be allowed as cost new of the physical properties of this company for the purposes of this proceeding, we must consider not only the cost new to the company but also original cost and all the conditions surrounding the construction and operation of the plant since its inception.

(2) Lands.

Appraisals were submitted by Frank R. Griffith, general manager of the Huntington company, and O. P. Baldwin for the city of Alhambra. An appraisal was also submitted in typewritten form purporting to be an estimate, by Lloyd R. Macey of the William R. Staats Company of Pasadena. Mr. Macey did not present himself for examination at the hearing. These appraisals in tabular form follow:

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Alhambra System.

	Macey for Water company	Griffith for Water company	Baldwin for city
Oak Knoll, lot A, .10 Ac.	$600 00	$500 00	$500 00
Oak Knoll, lot B, .12 Ac.	720 00	1,600 00	1,000 00
Alhambra Addition Tract, lot 1, range 18, 5 Ac.	15,000 00	12,500 00	10,000 00
Phillip's Subdivision Alhambra Addition, lot 1, .2 Ac., and reservoir site, Garfield avenue, 2.34 Ac.	7,500 00	7,375 00	5,000 00
Oak Knoll, Sheet C—			
Lot L, .531 Ac.	3,300 00	4,248 00	4,248 00
Lot M, .02 Ac.	120 00	200 00	200 00
Lot N, .06 Ac.	420 00	550 00	550 00
Lot O, .48 Ac.	2,400 00	3,840 00	2,300 00
Lot P, .336 Ac.	2,016 00	2,688 00	1,200 00
Lot R, 1.31 Ac.	6,550 00	10,480 00	5,500 00
Lot S, 2.17 Ac.	10,850 00	17,360 00	3,500 00
Lot T, .24 Ac.	1,440 00	1,920 00	750 00
	$50,916 00	$63,261 00	$34,748 00
Los Angeles County—			
Lot 4, block A	----------	$1,470 00	
Lot 14, block B	----------	1,130 00	
		$2,600 00	
San Marino and San Gabriel—			
Lot 3, 1.10 Ac.	----------	$9,600 00	
Lot 5, 50 x 100 feet	----------	500 00	
Lot 5, 50 x 100 feet	----------	500 00	
Lots 6 and 7, 9.54 Ac.	----------	33,390 00	
Part lot 1, 80 x 85 feet	----------	700 00	
Total	----------	$44,690 00	

Mr. Baldwin, together with two other real estate men, after a careful study of the situation and of each parcel of land, made independent appraisals, and the combined result of the judgment of these three men was submitted in evidence. Mr. Griffith, on the other hand, appears to have valued these parcels of land more from a general knowledge of the vicinity than from a knowledge of these specific parcels of land, and on the whole it appears that he has jumped to conclusions and has not carefully worked out his estimate. The values submitted are based exclusively on the use of the land for residential purposes, no consideration having been given to their value as a water producing property. The courts have held that in arriving at a value for real estate its value for all uses to which it may be put should be considered. There is very little evidence on which to base an estimate of real estate in districts other than the Alhambra and Oak Knoll district, except that of Griffith, and he testified to the relative value as between his estimate of the lands used in the Alhambra division and the lands of the other divisions. The evidence shows that a part of this real estate is not used or useful in serving present consumers.

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The appraised value of these parcels follows:

Alhambra	$7,250
San Marino and San Gabriel	22,350

As before stated, the preceding sums are based entirely upon use for residential purposes. I am of the opinion that in a case of percolating water running through the lands any value due to the presence of water should be merged with the value of the land.

(3) Intangibles.

For the purposes of this discussion this heading has been subdivided into the following:

(*a*) Water rights.
(*b*) Going concern.
(*c*) Additional overhead.

(a) Water Rights.

J. B. Lippincott for the water company and A. L. Sonderegger for the city of Alhambra submitted estimates of the value of water rights. Mr. Lippincott in applicant's Exhibit No. 4, entitled "Report on the Amount of the Available Water Supply of the San Gabriel Valley Water Company," made a detailed study of the water situation of this locality. A synopsis of this report follows:

The water supply of this company is obtained from wells sunk in the water-bearing strata of the Pasadena Mesa between what are known as the Monk Hill Dyke and the Raymond Hill Dyke. The Monk Hill Dyke is a continuance of the San Rafael Hill and forms a natural underground barrier or dam. There are numerous openings through this barrier which permit the passage of water into the area between the dykes. The Raymond Hill Dyke is comprised of a miocene soft sandstone and extends from Arroyo Seco in a northeasterly direction past Oak Knoll to Monrovia. This dyke is a barrier to the flow of the water and forms a natural underground reservoir. The area between these two dykes is some 21.7 square miles. The principal stream draining into this basin is the Arroyo Seco with its tributary, Millard Canyon. The watershed draining into this stream is situated in the San Gabriel Range of mountains and part of the water goes down Arroyo Seco to the Los Angeles River while the balance goes underground to the Pasadena Mesa.

Mr. Lippincott testified that the water-bearing strata contained a sufficient supply to last 31½ years if extracted at the rate of 758 miner's inches (miner's inch equaling one-fiftieth of a second foot), which Mr. Lippincott and T. B. Allin, city engineer of Pasadena, arrived at, as the extraction during the year 1912. Using the average

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yearly rainfall, the area of the watershed and a runoff factor, he arrives at an estimate of 1,456 miner's inches as a total available annual inflow to this reservoir, and that the present use (1914) is 1,069 miner's inches. His report states that if Pasadena secures an outside supply of water, which he believes will be necessary in the course of a few years, the annual inflow will be increased to a considerable extent. Kewen Canyon which supplies Alhambra and Oak Knoll is at the lip of this (Raymond Hill) dyke and is one of the best water supplies in the Pasadena Mesa.

The water supply for San Marino, San Gabriel and Rosemead is obtained from wells located near those towns and for which water the company claims no water right value. The plain in which these wells are located has a large water supply and wells can be sunk at practically any locality and an abundant source of water supply obtained.

For determination of the amount of water used by the company in supplying the city of Alhambra, Mr. Lippincott testified that 314 miner's inches, which is the recorded maximum simultaneously drawn from all sources, is necessary for the operation of the water company's system. The water company's pumping plants were tested in 1912 by A. L. Sonderegger for the city of Alhambra and he reported a maximum capacity of 314.7 miner's inches. The water company, through its attorneys, contended that the above maximum should be accepted as the quantity necessary, whereas the city of Alhambra contends that the average summer draft on the system should be used. Mr. Sonderegger estimates this average summer use as 153.5 miner's inches. He maintains that the underground reservoir is the same as a surface reservoir and that the water company has in this underground reservoir behind the Raymond Hill Dyke a storage system from which to pump to meet the peak load demand, and that the consumers are paying interest and depreciation on a plant capacity of 314 miner's inches and that therefore these additional plants in conjunction with the underground reservoir take the place of a surface storage system.

E. R. Bowen submitted a statement showing that the maximum pumpage during various short periods, none of which exceeded ten hours, was 314 miner's inches. The system which supplies Alhambra has three small distributing reservoirs of an aggregate capacity of 7½ million gallons. The maximum daily production was 3½ million gallons per day, and the average daily use for the month of heaviest draft is 2¼ million gallons. These reservoirs can be used to equalize the consumption and if so used the maximum produced for a few hours is not a criterion of the quantity of water supply necessary. Therefore, I do not accept the contention of Mr. Lippincott that the amount pumped for a few hours when operating at the maximum capacity of the plants, is the amount necessary for the efficient operation of this

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system, nor that of Mr. Sonderegger that the average summer use is the amount necessary.

Under efficient operation of this system the water supply which must be available for use is the amount which can be pumped together with that available in storage which will tide the water company over the longest period of greatest demand possible with the existing facilities.

Counsel for applicant, in his brief, contends that the company must have a right to take 314 miner's inches in order to meet the requirements of its consumers, and states that the Commission should approve this, because if it does not any company that invades the field of extraction occupied by the San Gabriel Valley Water Company and diminishes the quantity of water which the San Gabriel Valley Water Company can take therefrom would have a right to cite this Commission in justification of the position taken by such invader. I desire to call attention to my belief that in determining the amount which is necessary for the efficient operation of the system the amount which the company has acquired a right to extract from this field or the amount that the company may have used during the five years next last past is not persuasive.

J. B. Lippincott and E. R. Bowen for the water company presented a valuation of water rights evidencing a value of $1,126.50 per miner's inch (one-fiftieth of a second foot) for water in Kewen Canyon and $1,000 per miner's inch at the Oak Knoll plant. This estimate is based on the next available source of supply theory, using the Los Angeles Aqueduct as this source. A. L. Sonderegger for the city of Alhambra also appraised the water rights of this company by the next available source of supply theory, but arrived at a value of $500.00 per miner's inch by pumping on the area known as Chapman's Ranch on the San Gabriel River.

If we are to consider this method of arriving at a value for this water supply, I can see no logical reason for neglecting to consider the surplus supply in the natural underground reservoir in the area between the Raymond Hill Dyke and the Monk Hill Dyke. The evidence shows that there is a large excess of inflow over withdrawals with the prospect that if Pasadena secures an additional supply from an outside source this inflow will be increased. There are 21.7 square miles in the area between the dykes, a part of which is either owned or the water rights are owned by the Huntington company, but there is a large area not controlled by this company. In this area are located a large number of wells operating at present, which could perhaps be purchased or land bought and additional wells sunk, and so long as the supply of other users was not decreased these wells could continue to operate. Accepting Mr. Lippincott's testimony, there is a sufficient supply to care for any increased demands which may occur.

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The evidence presented by Mr. Lippincott on the value of water rights in this proceeding is the same as he presented in testimony *In the matter of the application of the Peoples Water Company for reorganization.* I am of the same opinion in regard to this testimony as Commissioner Edgerton who stated in Decision No. 2586 (App. 1531, *supra*), as follows:

> "As to the value of the water rights under which the present actual production of water is made I have given earnest and careful consideration to Mr. Lippincott's method of arriving at value and also to all other suggested methods, but I can not find in any of them a satisfying basis upon which to fix a definite value for these water rights.
>
> It has been specifically determined by the United States Supreme Court that the appropriation of water by a public utility from a running stream creates a property right, but our courts nowhere have pointed out any basis upon which the value thereof is to be determined. I believe Mr. Lippincott has put before us a perfectly sincere and carefully thought out basis for determining value and if we were not dealing with a public utility service, which, of course, involves the control of both value of plant and return thereon, his method would be very persuasive, but, of course, no strict comparison can be made between the value of water which is not under public control and that which is. However, the evidence of Mr. Lippincott is valuable and has been given very careful consideration."

San Joaquin and Kings River Canal and Irrigation Company vs. *The County of Stanislaus,* 233 U. S. 454, clearly establishes that water rights acquired by appropriation may have a value, but it is a most difficult problem to determine the extent of that value.

In *Water Company of Tonopah* vs. *Public Service Commission of Nevada,* decided on August 13, 1913, being a case of water right value claimed for percolating water, Judge Morrow refers to the water company's claim as follows:

> "The water which it (the company) claims as a water right is percolating water running through its lands. I do not understand that percolating water passing under or through the soil is anywhere recognized as a water right, having a valuation separate and distinct from the land. It is not in any sense surface water. It is not water appropriated from running streams; nor is it water, the right to which is the same as that of a riparian owner. Percolating water is part and parcel of the soil, and it is as much a constituent element of the land as the mineral therein contained. Its value, if it has any, is therefore, in the land and can not be separated from the land. It follows that in this case the value which the water has must be in the land. It may be that the complainant's development of water upon this land has given it a largely increased value, but if that is so, it appears to me that that should be the valuation of the land with its water content

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as a whole and not as land with water right attached. This may not make a great difference in the result; but it will enable the Commission and the Court to make a comparison with other land of like character and similarly situated."

In concluding, Judge Morrow says:

"It seems to me that it would be difficult to establish an absolutely independent water value aside from the value of the land; but the value of the water with the land may be ascertained in the view of its available uses."

If we use the area behind the Raymond Hill Dyke as the next available source and compute the value on that basis, the amount derived would equal capitalization of a slightly increased cost of pumping, and interest and depreciation on a pipe line which would probably not exceed three miles in length. The cost to the company of these rights is not available; however, this company has been compelled to defend its rights in the courts for a number of years and was undoubtedly put to considerable expense.

After carefully considering all the elements going to make up the value of the lands with their appurtenant water, I find as a fact these values are:

Alhambra	$87,500
Los Angeles County	2,000
San Marino and San Gabriel	15,000
Oak Knoll	17,950
Rosemead	3,070
Entire system	$125,520

(b) Going Concern.

No claim was made by the water company of an amount to be allowed for going concern, development of business or franchise value.

(c) Additional Overhead.

The engineers for the water company contend that an allowance of 30 per cent should be added to their appraisal for overhead. This amount was based on the overhead cost of the Los Angeles Aqueduct. The Commission's hydraulic engineers estimate that the fair allowance for overhead is 15 per cent for pipe lines; 16 per cent for wells, machinery, etc.; 12 per cent for buildings and reservoirs; and 10 per cent for such items as services and meters.

Mr. Lippincott has duplicated in his overhead a number of the items which he has already included in his unit costs, such as incidentals, storage and superintendence.

After considering all the evidence relative to auxiliary and overhead expense, I am of the opinion that the Commission's engineers have been liberal in this instance in their estimate for this item.

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An attack was made on the Commission's engineers' overhead allowance on the ground that a larger overhead had been used in a number of other proceedings than has been allowed in this instance and especially in the application of the city of San Diego to fix rates. This matter was also taken up in the *Peoples Water Company* case, *supra,* in which Commissioner Edgerton says:

> "Our attention was also called to the overhead fixed by Mr. Hawley in the application of the city of San Diego to fix rates upon a portion of its water system. He allowed in that case a higher average overhead than he does here, but he calls attention to the fact that the San Diego property consists of reservoirs, transmission mains, filter stations, etc., at long distances from supply points and built under conditions which would involve greater uncertainties and more risk, resulting in larger expenditures for contingencies, engineering and administration than we are here dealing with. Peoples Water Company system has a greater proportion of construction, such as distribution, pipe lines, etc., which involve a lesser amount of expenditures which go to make up overhead."

Combining all the elements to be considered in an appraisal for rate making purposes which have been enumerated in this opinion, I find as a fact that the reasonable cost new of the plant of this company would be:

Alhambra	$320,454
Los Angeles County	15,395
Oak Knoll	65,211
San Marino and San Gabriel	73,143
Rosemead	29,914
Total	$504,117

2. MAINTENANCE AND OPERATION EXPENSES.

Mr. Lippincott, for the water company, submitted the following estimate as a proper sum to be allowed for maintenance and operation:

Alhambra	$26,063
Los Angeles County	1,506
San Marino and San Gabriel	2,682
Oak Knoll	4,548
Rosemead	770
Total	$35,569

R. A. Pabst, of the accounting department of this Commission, examined the books of the company and reported maintenance and operation expenses and the revenue of the company for the years 1913 and 1914. A synopsis of this report and of data filed with this Commission under General Order No. 38, follows.

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Annual Maintenance and Operation Expense.

Locality	1912	1913	1914
Alhambra	$24,291 00	$26,063 00	$25,002 00
Los Angeles County	4,227 00	1,506 00	606 00
Oak Knoll	3,986 00	4,548 00	3,979 00
San Marino and San Gabriel	*	2,682 00	5,542 00
Rosemead	1,131 00	770 00	868 00
Entire system	$33,635 00	$35,569 00	$35,997 00

*Included in county.

The evidence shows that in February, 1914, a flood occurred which washed away a part of the plant which supplies San Marino and San Gabriel. The large increase in the operating expense of this plant during 1913 and 1914 is due to the extra expense of $2,100.00 incurred because of this flood and is an extraordinary expense which will not recur every year.

Of the amount reported for maintenance and operation expense approximately $1,100.00 annually has been included in the appraisal upon which the company's returns are computed. It would, therefore, be erroneous to include this amount. Deducting these amounts from the maintenance and operation expense for 1914 leaves $32,797.00. The segregation of these expenditures among the different divisions by the company has been based upon the water used in each of these divisions. This use fluctuates from year to year because of variation in precipitation and climatic conditions. With the increase in the amount of water consumption and the corresponding increase in maintenance and operation expenses and apportioning the extraordinary expense over a period of years, I find as a fact that the fair sum to be allowed for maintenance and operation expense is $33,600.00 annually. From the segregation of this expense by the company for 1912, 1913 and 1914, and from the data on water use submitted at the hearing, the distribution of expense to the different portions of the system will approximate the following if averaged over a period of years:

Alhambra	$25,000
Los Angeles County	950
Oak Knoll	3,850
San Marino and San Gabriel	2,900
Rosemead	900
Entire system	$33,600

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A summary of the annual charges follows:

	Maintenance and operation	Sinking fund annuity at 6 per cent	Interest	Total
Alhambra	$25,000 00	$6,234 00	$25,636 00	$56,870 00
Los Angeles County	950 00	322 00	1,230 00	2,502 00
Oak Knoll	3,850 00	824 00	5,217 00	9,891 00
San Marino and San Gabriel	3,000 00	1,557 00	5,850 00	10,407 00
Rosemead	800 00	467 00	2,393 00	3,660 00
Entire system	$33,600 00	$9,404 00	$40,326 00	$83,330 00

3. RATE SCHEDULE.

The income of this company, as reported by R. A. Pabst, has been as follows:

Location	1912	1913	1914
Alhambra	$46,008 00	$48,136 00	$47,805 00
Los Angeles County	7,035 00	2,528 00	1,088 00
San Marino and San Gabriel	*	5,487 00	7,305 00
Oak Knoll	7,974 00	10,957 00	9,082 00
Rosemead	1,369 00	1,373 00	1,556 00
	$62,386 00	$68,481 00	$66,836 00

*Included in county.

Consumption increased 3.3 per cent in 1913 over 1912, and about 5 per cent in 1914 over 1913. The number of service connections increased 8.6 per cent for 1914 over 1913. The use of water fluctuates, varying with precipitation and temperature.

All conditions and probable increase in revenue having been carefully considered, the revenue will not exceed $70,000.00 annually if the present rates are continued in effect. It is, therefore, evident that the present rates are inadequate. It now remains to compute a rate that will admit of the utility earning such compensation as under all the circumstances is just to it and to the public.

The following tabulation sets out a rate schedule and displays the resulting monthly returns when applied to the recorded use of water in the various divisions served by this company, considering each as a separate and distinct system:

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Quantity	Alhambra	Oak Knoll	San Marino and San Gabriel	Los Angeles County	Rosemead	Entire system
500 cubic feet or less			$1 50	$1 50	$3 00	
600 cubic feet or less	$1 00	$1 00				$1 00
500 to 5,000 cubic feet			25	30	75	
600 to 5,000 cubic feet	12	12				12
Over 5,000 cubic feet	10	10	20	25	50	10
Flat rate minimum	1 00	1 00	1 50	1 50	3 00	1 00
Irrigation per 1,000 cubic feet or less	50	50	50	50	50	50
Hydrant rental, each	2 00	2 00	2 00	2 00	2 00	2 00
Municipal use per 1,000 cubic feet	10	10	20	25	50	10
Estimated annual revenue	$57,000	$10,300	$11,000	$2,500	$3,400	$80,000

Applicant asks that a uniform rate be established over the entire system, and I believe this advisable.

San Marino, San Gabriel, Rosemead and that portion of Los Angeles County served by this system are sparsely settled and have few consumers per mile of main. The following is a tabulation showing the number of consumers per mile of main and the investment in the pipe system per consumer:

Division	Number of taps	Miles of main	Investment per tap	Taps per mile of main
Alhambra	1,706	74.5	$98 00	23
Los Angeles County	34	2.4	153 00	14
Rosemead	32	3.4	388 00	9.4
San Marino and San Gabriel	92	12.4	378 00	7.7
Oak Knoll	100	8	292 00	12.5

As stated before, the Huntington Land and Improvement Company subdivided and marketed the real estate in the localities served by this system and is at present exploiting these lands, with Alhambra as a possible exception. Thus, if a uniform rate high enough to pay interest on the entire plant is put into effect, the consumers will be saddled with a part of the expense to the Huntington company of marketing their subdivisions, and the few consumers who are at present in the subdivisions will have a larger burden than is their fair share. In Los Angeles County and Rosemead a district rate covering all charges would be so high as to be practically prohibitive.

In *Southern Pacific Co.* vs. *Bartine*, 170 Fed. 725, at page 767, the Court said:

> "If a railroad is built into a new, sparsely settled territory, with a view of serving a large future population and developing business, the constitution does not require the few people and the

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small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

In Decision No. 2483, Case 597, *W. J. Rogers and Central Pacific Land & Lumber Company* vs. *Sacramento Valley West Side Canal Co., and William F. Fowler, Receiver of the Property of Sacramento Valley West Side Canal Company*, decided June 14, 1915, Commissioner Thelen says:

"In *Covington & L. Turnpike Road Company* vs. *Sanford*, 164 U. S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates to be charged by the Covington & Lexington Turnpike Road, as established by the General Assembly of Kentucky. At page 596, Justice Harlan says:

'The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.'

Again, on the same page:

'If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public.'

In the leading case of *Smythe* vs. *Ames*, 169 U. S. 464, the same learned justice, at page 547, says:

'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.'

These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay."

In recommending a rate I will not only consider the reasonable cost new of this plant, but will consider all the conditions obtaining during the original construction and subsequent operation, and such rate will provide an income on the fair value for rate making of the property being used for the convenience of the public.

At the time of the hearing this Commission had no jurisdiction over rates in Pasadena, and therefore while I recommend that a uniform rate be established for the entire system, I desire to point out that this order is not operative within the limits of that municipality.

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I submit herewith the following form of order:

ORDER.

A public hearing having been held, evidence submitted and briefs filed in the above entitled proceeding, and the Commission being fully apprised in the premises and the matter being now ready for decision,

It is hereby found as a fact that the rates charged by the San Gabriel Valley Water Company for domestic and irrigation water in so far as they differ from the rates set out in this order are unremunerative and unjust rates, and the rates set out in this order are remunerative, just and reasonable.

And basing this order on the foregoing finding of fact and on the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that the following be and are hereby declared to be the rates to be charged by the San Gabriel Valley Water Company, to wit:

DOMESTIC, INDUSTRIAL AND COMMERCIAL.

600 cubic feet or less	$1.00 per month
600 to 5,000 cubic feet	.12 per 100 cubic feet
Over 5,000 cubic feet	.10 per 100 cubic feet

MUNICIPAL USE.

Alhambra fire hydrant service, minimum	$250.00 per month
Fire hydrants, each	2.00 per month
Oak Knoll fire hydrant service, minimum	20.00 per month
Fire hydrants, each	2.00 per month
Other divisions—each fire hydrant	2.00 per month
Water for municipal use	.10 per 100 cubic feet

IRRIGATION.

Per 1,000 cubic feet or fraction	50 cents

Flat rates shall remain the same as established by Ordinance No. 815 of the city of Alhambra, except the minimum charge for residences and stores, which is hereby fixed at $1.00 per month.

It is further ordered that upon all tracts where distribution is effected by a group or association of consumers upon the tract, payment be made to the San Gabriel Valley Water Company in a lump sum, and in computing rates this group or association shall be considered as one consumer.

It is further ordered that San Gabriel Valley Water Company put into effect the foregoing schedule of rates, such rates to become effective as of and on December 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20th day of November, 1915.

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Decision No. 2917.

IN THE MATTER OF THE APPLICATION OF CENTRAL CALIFORNIA TRACTION COMPANY TO BE RELIEVED FROM THE PROVISIONS OF CHAPTER 494, CALIFORNIA STATUTES OF 1915, RELATIVE TO TRANSMISSION OF TRAIN ORDERS.

Application No. 1963.

Decided November 20, 1915.

Report of the Commission.

Central California Traction Company having filed its petition asking that the Railroad Commission make its order authorizing it to require or permit motormen, conductors, brakemen and trainmen to receive, deliver and transmit, by telephone, orders for the movement of trains, cars, engines and motors upon, over and along the tracks of said railroad, and the Railroad Commission being of the opinion that said request is reasonable and should be granted,

It is hereby ordered that this application be and the same is hereby granted, and that said Central California Traction Company be and it is hereby authorized to require or permit any of the motormen, conductors, brakemen or trainmen on the railroad operated by it, to receive, deliver and transmit, by telephone, orders for the movement of trains, cars, engines and motors upon, over and along said railroad, as and when the same is necessary.

Dated at San Francisco, California, this 20th day of November, 1915.

Decision No. 2918.

IN THE MATTER OF THE APPLICATION OF PAUL MORRIS TO SELL TO TUOLUMNE MERCHANDISING COMPANY A TELEPHONE EXCHANGE LOCATED AT TUOLUMNE, CALIFORNIA.

Application No. 1905.

Decided November 20, 1915.

Report of the Commission.

ORDER OF DISMISSAL.

Applicant Paul Morris having on November 19, 1915, made written request to the Railroad Commission that the application entitled as above be dismissed,

It is hereby ordered that said application be and the same hereby is dismissed without prejudice.

Dated at San Francisco, California, this 20th day of November, 1915.

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Decisions Nos. 2919 and 2920, grade crossings; not printed. See end of volume.

DECISION NO. 2921.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS, AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided November 20, 1915.

REPORT OF THE COMMISSION.

SIXTH SUPPLEMENTAL ORDER.

Whereas this Commission by Decision No. 2776, dated August 31, 1915, authorized the delivery to Western States Gas and Electric Company of $182,000.00 face value of bonds, the issuance of which was authorized by Decision No. 2550, dated June 30, 1915, provided said Western States Gas and Electric Company deposit with the trustee, Girard Trust Company, the sum of $182,000.00 in cash, said $182,000.00 so deposited with the trustee to be withdrawn by applicant herein from time to time, in accordance with order of this Commission permitting the withdrawal; and

Whereas applicant on November 17, 1915, filed a statement showing that it has expended from October 1, 1915, to October 31, 1915, both dates inclusive, the sum of $24,341.16 for extensions, additions and betterments; and

Whereas applicant asks for authority to withdraw from the aforesaid fund of $182,000.00 on deposit with the trustee the sum of $24,341.16; and

Good cause appearing,

It is hereby ordered that Western States Gas and Electric Company be given and it is hereby given authority to withdraw from Girard Trust Company, trustee, the sum of $24,341.16, said $24,341.16 being a portion of the fund deposited with the trustee in accordance with Decision No. 2726, dated August 31, 1915, of the Railroad Commission of the State of California.

It is hereby further ordered that Decision No. 2550, dated June 30, 1915, as amended by Decisions No. 2697, No. 2726 and No. 2857, remain in full force and effect, except as they may be in conflict with this sixth supplemental order.

Dated at San Francisco, California, this 20th day of November, 1915.

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DECISION No. 2922.

IN THE MATTER OF THE APPLICATION OF LAKE TAHOE RAILWAY AND TRANSPORTATION COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1955.

Decided November 20, 1915.

Applicant applies for and is granted permission to issue four one-day promissory notes bearing interest at 5 per cent per annum, such notes to be issued for a period of not exceeding two years and to be used for the purposes of refunding similar notes, proceeds of which were used for additions and betterments to its system.

Frank S. Oliver, for Applicant.

REPORT OF THE COMMISSION.

OPINION.

This is an application of Lake Tahoe Railway and Transportation Company for an order authorizing the issue of four one-day promissory notes, amounting in all to $50,000.00, for the purpose of renewing an equal number of one-day notes which are specified in the order herein.

The evidence shows that a large portion of the proceeds of said four outstanding notes were used by applicant for reimbursing itself for expenses incurred for the acquisition of property and for the construction, extension and improvement of the facilities and service of the hotel and summer resort which it operates on the shores of Lake Tahoe in conjunction with its railroad and steamship business.

The notes which applicant wishes to renew are endorsed by all of applicant's stockholders, and the new notes will be likewise so endorsed.

ORDER.

Lake Tahoe Railway and Transportation Company having applied for an order authorizing the issue of certain promissory notes, and a public hearing having been held on said application and the Railroad Commission finding that the application should be granted,

It is hereby ordered that Lake Tahoe Railway and Transportation Company be and the same is hereby authorized to issue its promissory notes, for terms not exceeding two years from the date hereof, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same party as at present.

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namely, Union Trust Company of San Francisco, in renewal of the following notes:

Amount	Interest	Date of maturity
$25,000.00	5 per cent	May 7, 1914
17,500.00	5 per cent	May 7, 1914
5,000.00	5 per cent	April 20, 1915
2,500.00	5 per cent	May 14, 1915

On the following conditions, and not otherwise, to wit:

1. Lake Tahoe Railway and Transportation Company shall issue said notes so as to net not less than the face value thereof.

2. Lake Tahoe Railway and Transportation Company is hereby authorized, during the period of twenty-three months from the date hereof, to issue further notes in renewal of those herein authorized, on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed two years from the date of this order.

3. Lake Tahoe Railway and Transportation Company shall report to the Railroad Commission within twenty days after the issue of the respective notes hereby authorized, the fact and the date of issue, the face value of the respective notes, the rates of interest, and the application of the proceeds.

4. The authority herein granted is conditioned upon the payment of the fee prescribed in section 57 of the Public Utilities Act, as amended.

Dated at San Francisco, California, this 20th day of November, 1915.

DECISION NO. 2923.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1965.

Decided November 20, 1915.

Applicant, having $300,000.00 face value 6 per cent promissory notes outstanding which it desires to refund, applies for and is granted permission to issue a like face value of 6 per cent notes secured by $400,000.00 face value of its bonds, for such purposes, notes to run for a period of not to exceed one year.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of three promissory notes, amounting in all to $300,000.00, and authorizing the pledging of $400,000.00 of applicant's bonds as collateral security for

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the same, for the purpose of refunding six of applicant's promissory notes, of $50,000.00 each, now due. The notes are specified in the order herein.

The evidence shows that the said six outstanding notes, secured by $400,000.00 of applicant's bonds, were issued in pursuance of this Commission's order as set forth in Decision No. 2571, and that said notes, or the proceeds thereof, were used by applicant for the acquisition of property and for the construction, extension and improvement of its facilities and service.

ORDER.

San Joaquin Light and Power Corporation having applied for an order authorizing the issue of three promissory notes, hereinafter described, for the purpose of refunding six promissory notes, also hereinafter described, and for an order authorizing the pledging of $400,000.00 of its bonds as collateral security for the same, and a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which said outstanding notes, or the proceeds thereof, were used were not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered that San Joaquin Light and Power Corporation be and the same is hereby authorized to issue its promissory notes, as hereinafter set forth, for terms not exceeding two years from July 19, 1915, at rates of interest and in total amounts not to exceed those now in effect, for the purpose of refunding the following notes:

Payee	Amount	Interest rate	Maturity
Bank of California	$50,000 00	6%	Nov. 19, 1915
Bank of California	50,000 00	6%	Nov. 19, 1915
Savings Union Bank and Trust Company	50,000 00	6%	Nov. 19, 1915
Savings Union Bank and Trust Company	50,000 00	6%	Nov. 19, 1915
Savings Union Bank and Trust Company	50,000 00	6%	Nov. 19, 1915
Savings Union Bank and Trust Company	50,000 00	6%	Nov. 19, 1915

The notes which applicant is hereby authorized to issue are as follows:

Date	Payee	Amount	Rate of interest
Nov. 19, 1915	Hibernia Savings Bank of Los Angeles	$100,000 00	6%
Nov. 17, 1915	Security Trust and Savings Bank	150,000 00	6%
Nov. 17, 1915	Security National Bank	50,000 00	6%

It is hereby further ordered that San Joaquin Light and Power Corporation be and it is hereby granted authority to pledge as collateral

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security for the notes herein authorized, or renewals thereof, its first and refunding mortgage forty-year Series "C" 6 per cent gold bonds, being a portion of the bonds heretofore authorized to be issued in Decision No. 2335, dated May 3, 1915, upon the basis of $1,333.33 par value of bonds for each $1,000.00 face value of the notes so secured.

The authority herein given is given on the following conditions, and not otherwise, to wit:

1. San Joaquin Light and Power Corporation shall issue said notes so as to net not less than the face value thereof.

2. San Joaquin Light and Power Corporation is hereby authorized during the period of six months from the date of this order to issue further notes, in renewal of those herein authorized, on the same terms, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, respectively, shall not exceed one year from July 19, 1915.

3. San Joaquin Light and Power Corporation shall report to the Railroad Commission within twenty days after the issue of the respective notes hereby authorized the fact and the date of issue, the face value of the respective notes, the rate of interest, the application of the proceeds, and the number of applicant's bonds pledged as collateral security therefor.

4. The authority herein granted is conditioned upon the payment of the fee prescribed in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 20th day of November, 1915.

DECISION NO. 2924.

SAMUEL J. MILLER

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY.

Case No. 873.

Decided November 22, 1915.

Complainant, residing in the city of San Francisco, claimed that service rendered by defendant company was unsatisfactory, and refused to pay bills rendered therefor. Service was accordingly discontinued and complainant now petitions the Commission to compel defendant to reconnect his premises, and it appearing that defendant went to extraordinary lengths to give satisfactory service, but that complainant's demands were extremely unreasonable, complaint dismissed.

Samuel J. Miller, in propria persona.

James T. Shaw, for the Defendant.

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REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is a complaint which has been filed with the Railroad Commission by Samuel J. Miller, residing at 440 Collingwood street in the city of San Francisco, versus The Pacific Telephone and Telegraph Company, in which it is alleged that an application having been made on August 2, 1915, to the defendant company for the installation of telephone service at the complainant's premises, service was denied by the defendant for the reason that an outstanding bill for service previously rendered the complainant at this address remains unpaid, and that the complainant refused payment on the grounds that the service has been unsatisfactory. The complaint also shows that, upon the refusal of the defendant to install service, complainant has rendered a bill against defendant for an amount claimed to be due for the use of certain of his property by the defendant for the purpose of attaching its wires used in providing telephone service to the complainant and other patrons of the defendant. The Commission is, therefore, asked to issue an order that service such as may be relied upon at all times be installed, that an adjustment of the defendant's bill against complainant according to the quality of service be made, and that the defendant be required to pay the complainant's claim for the use of the property referred to.

As to the settlement of the complainant's bill against defendant, this is clearly a matter for the courts and one over which this Commission does not have jurisdiction.

As to the restoration of service and the settlement of the defendant's bill against the complainant for service previously rendered, the complainant should not be denied service if service can be reasonably provided, and if the defendant's charges are paid and its rules and regulations complied with on the part of complainant. Complainant, however, has refused to pay for service heretofore rendered, on account of which refusal service was discontinued, and has failed absolutely to produce any evidence to show either that the defendant has not provided reasonably satisfactory service or that its charges for the service rendered are unreasonable or unjust. On the contrary, it appears from the evidence that the defendant, in its efforts to satisfy the complainant in the past, has unquestionably gone to far greater length in this respect than it could reasonably be required to go in general practice. I am accordingly of the opinion that the complaint should be dismissed, and submit the following form of order:

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ORDER.

Complaint having been filed with this Commission by Samuel J. Miller, complainant, versus The Pacific Telephone and Telegraph Company, defendant, asking that an order be issued requiring the defendant to install telephone service at his premises at 440 Collingwood street, city of San Francisco, and that a settlement of certain accounts between the respective parties hereto, as more specifically referred to in the foregoing opinion, be made, and a hearing having been had and it appearing to this Commission that the defendant can not, under the conditions referred to in the preceding opinion, be required to provide service in this case except upon the payment by the complainant of the said defendant's charges and upon compliance with its reasonable rules and regulations,

It is hereby ordered that the complaint herein be and it is hereby dismissed, without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of November, 1915.

DECISION No. 2925.

IN THE MATTER OF THE APPLICATION OF ALPAUGH WAREHOUSE AND MILLING COMPANY FOR AUTHORITY TO ISSUE STOCK AND TO MORTGAGE ITS PROPERTY.

Application No. 1948.

Decided November 22, 1915.

Applicant having heretofore issued certain stock and executed a promissory note without the necessary authorization of this Commission, now applies for and is granted permission to issue 170 shares of stock of the par value of $5.00 per share to be issued, 17 shares each, to ten certain directors in lieu of stock heretofore illegally issued, also to execute its three-year promissory note of the face value of $2,750.00 in lieu of a like note, such stock and note to be issued only after the stock and note heretofore issued shall have been turned in and canceled.

REPORT OF THE COMMISSION.

This is an application on behalf of Alpaugh Warehouse and Milling Company, hereinafter referred to as the "warehouse company," for permission to issue 170 shares of stock of the par value of $5.00 per share and to mortgage its property to J. E. Reep for $2,750.00.

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From the evidence it appears that applicant is a corporation organized during the early part of this year by ten inhabitants of the town of Alpaugh, Tulare County, who felt that their community needed a warehouse.

The warehouse company's articles of incorporation provide for an authorized capital stock of $10,000.00, divided into 2,000 shares of the par value of $5.00 each. Each of said organizers subscribed and paid for 17 shares of the company's capital stock at par, which gave the warehouse company a total working capital of $850.00. Out of this amount the company paid its incorporation expenses and fees and also paid $750.00 cash for a parcel of land at Alpaugh of nearly ten acres, having a frontage of approximately a quarter of a mile upon the Santa Fe Railroad track.

The warehouse company thereafter proceeded to erect upon said land a corrugated iron warehouse, 50 by 144 feet, at a total cost of approximately $3,075.00, $2,700.00 of which was paid for in cash and approximately $375.00 of which is still due from the warehouse company for labor contributed upon the understanding that it would be paid for out of the profits that the warehouse company was expected to make.

In return for the $85.00 subscribed by each of the ten organizers, whose names are set forth in the following order, the warehouse company issued to each of them 17 shares of the company's capital stock, and the company further borrowed $2,750.00 from J. E. Reep and in return executed to him a one-year note for said amount, bearing interest at the rate of 8 per cent per annum, and a mortgage securing the same. It further appears from the evidence that the warehouse company can not borrow money at a lower rate of interest than 8 per cent.

The warehouse company did not obtain permission from this Commission to issue any of said stock. The evidence clearly showed, however, that neither the warehouse company nor any of its officers or stockholders wilfully or intentionally violated the law in attempting to issue said stock, but that they proceeded in good faith, without any realization that it was necessary for them to obtain the permission of this Commission to issue the same.

The evidence further showed that the warehouse was built as carefully and economically as applicant's officers could build it, and that it is being operated at a low overhead cost. The only officer who receives any compensation is Mr. W. A. Settle, the company's secretary, who also acts as its general manager. When working in the warehouse, he receives the sum of $2.50 for each day of nine hours of such work. Otherwise he receives no compensation.

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The rates charged by the warehouse company are:

$1.00 per ton for the season, ending May 31st.
.40 per ton for grain stored temporarily (to be sold during the fall).
.25 per ton for loading cars through the warehouse.

The officers of the warehouse company had very little idea as to their probable profits or expenses, as this is their first season of operation. They now have approximately 950 tons of grain in their warehouse, upon almost all of which they expect to collect the seasonal rate.

We find that the subscriptions of the stockholders and the loan of Mr. Reep were both made in good faith, and that the money so received by the company was used for the acquisition of property and for the construction of its warehouse.

It is not necessary for a warehouse company to obtain authorization from this Commission to execute a mortgage, but it is necessary for it to obtain such authorization to issue a three-year note, whether secured by a mortgage or not.

ORDER.

Alpaugh Warehouse and Milling Company having applied for an order authorizing the issue of 170 shares of its capital stock to the original subscribers for the same, whose names are hereinafter set forth, and the issue of its promissory note in the sum of $2,750.00 and the execution of a mortgage securing the same to J. E. Reep, and a public hearing having been held on said application, and the Railroad Commission finding that applicant has received the sum of $85.00, the par value of 17 shares of said capital stock, from each of the men whose names are hereinafter set forth, in payment of their subscriptions for said stock, and that the said applicant has received the sum of $2,750.00 as a loan from said J. E. Reep; and the Commission further finding that the purposes for which said funds were used were not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered that Alpaugh Warehouse and Milling Company be and the same is hereby authorized to issue 17 shares of its capital stock, of the par value of $5.00 each, to each of the following subscribers:

J. L. Adams, J. C. Foss, William T. Holton, A. L. McCulloch, H. C. Porter, J. E. Reep, W. S. Reep, Frank N. Reep, N. Schilling, and W. A. Settle.

And Alpaugh Warehouse and Milling Company is further authorized to issue its promissory note to J. E. Reep for $2,750.00, said note

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to be secured by a mortgage by said warehouse company to said J. E. Reep and to be payable three years from the date of its issue, and to bear interest at the rate of 8 per cent per annum.

The authority herein given is given on the following conditions, and not otherwise, to wit:

1. Alpaugh Warehouse and Milling Company shall not issue or deliver any of said stock until all of the certificates for 170 shares of said stock which said company has illegally issued shall have been returned to said company and canceled by it.

2. Alpaugh Warehouse and Milling Company shall not execute said note to J. E. Reep until said J. E. Reep shall have canceled and returned to said company the note heretofore issued to him by said warehouse company, dated June 1, 1915.

3. Alpaugh Warehouse and Milling Company shall report to the Railroad Commission within twenty days after the issue of the respective certificates of stock and the note hereby authorized, the face value of the same, the rate of interest on said note and the application of the proceeds, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The stock and the note herein authorized to be issued or executed shall be issued or executed on or before June 30, 1916.

5. This order shall not become effective until Alpaugh Warehouse and Milling Company shall have paid the fee specified in section 51, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 22d day of November, 1915.

DECISION No. 2926.

NORTH PACIFIC STEAMSHIP COMPANY

vs.

SOUTHERN PACIFIC COMPANY ET AL.

Case No. 849.

Decided November 22, 1915.

Complainant attacks as unreasonable the charge of $2.50 per car now assessed by defendant company as a switching charge for moving cars over the belt railroad to wharves or piers. The San Francisco Chamber of Commerce, permitted to intervene, also attacks this charge, contending, that in San Francisco and no other city in the State, in switching cars to piers or wharves, a switching charge of $2.50 per car is assessed, while on cars moving to industrial or team tracks, this charge is absorbed by the carrier.

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Defendant contends that it can not absorb a charge in favor of a competitor, the steamship companies being in competition with the railroads, and hence such charge is not discriminatory or unjust.

Held, That the evidence shows that carriers, in absorbing the switching charge in certain cases, considers the through rate, with free delivery, a reasonable rate, and the addition of a $2.50 per car charge for switching to wharves is accordingly excessive. Defendant directed to discontinue the collection of a switching charge on cars moving to wharves or piers north of Market street in the city of San Francisco.

H. W. Glensor, for North Pacific Steamship Company.

C. W. Durbrow, for Southern Pacific Company.

Platt Kent, for The Atchison, Topeka and Santa Fe Railway Company.

Allan P. Matthew, for Western Pacific Railway Company.

Seth Mann, for San Francisco Chamber of Commerce.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner*.

This case, being at issue upon complaint and answers duly filed, came on for hearing regularly in San Francisco on October 5, 1915. The San Francisco Chamber of Commerce had asked for and been granted permission to intervene in behalf of complainant.

As illustrative of the different features involved in this case, a brief statement referring to past and present conditions in San Francisco, as relating to a charge by the railroads for a switching or delivery service, will be illuminating. For many years the defendant carriers made under certain circumstances, a charge for switching service and under other circumstances did not make a charge. To illustrate: The State of California owns and operates a belt line railroad around the water front. While this belt line road operates both north and south of Market street, its larger operations are north of Market street because of the carriers having team tracks, and various industries having industry tracks in that section of the city.

Before the case of the Associated Jobbers of Los Angeles versus Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company et al., Case No. 1704, decided April 5, 1910, (generally known as the "Switching Case") was decided, in which case the Interstate Commerce Commission was overruled by the Commerce Court, the decision of that court being overruled and the Commission's decision sustained by the United States Supreme Court, 234 U. S. 294, it was the practice of rail carriers, terminating at San Francisco, to use the belt line railroad to make deliveries to industries, team tracks, and docks and piers north of Market street. The charge made by the belt line of $2.50 per car was absorbed by the carriers on shipments to their

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team tracks and to docks and piers, but was not absorbed on shipments to industry tracks; that is, it was paid by the carriers to the belt line but collected from the industries. After the Supreme Court had affirmed the decision of the Interstate Commerce Commission in Case 1704, *supra*, that the switching charge was a part of the rate of the line haul, the rail carriers on April 1, 1915, changed their practice, continuing to make absorption of switching charge on shipments consigned to team tracks and began to absorb the charge on shipments consigned to industry tracks but discontinued to absorb the switching charge on shipments consigned to wharves and piers, the alleged reason for such action being that the water carriers competed with them (the rail carriers) and that they were not compelled to absorb switching charges to competitors.

The testimony in the case shows that at many other places in California, such as Oakland, Richmond, Stockton, Sacramento, San Pedro, Wilmington and San Diego, some of which cities have belt line roads which perform the terminal switching service and other dock companies which perform similar service, the rail carriers absorb the switching charge, San Francisco being the only exception, and that some of these absorptions are on shipments to water competitors.

The testimony further showed that in other cities in the United States, such as Chicago, St. Louis and New Orleans, where belt line roads are employed to perform delivery service, rail carriers absorb the switching charge of such belt lines.

While the complaint as originally filed by the Northern Pacific Steamship Company comprehended only switching to the pier of that company, the intervention of the San Francisco Chamber of Commerce widened the issues, and after much discussion at the hearing as to a continuance in order to give the intervener an opportunity to prepare to support its intervention, a stipulation was finally entered into by counsel for the complainant, defendants and intervener by the terms of which an examination into the switching situation in San Francisco, along the widest possible lines, could be made in this case, and a decision rendered applicable to all points where the defendant carriers do such switching in San Francisco, or have it performed by others.

It was further stipulated that in the cities named above, both in California and in other places in the United States, the carriers used the rails of belt line roads to make deliveries and absorbed the switching charges incidental to such use, and that San Francisco was the only exception to such custom; and for the purpose of this case it was further stipulated, in the case of some of these cities, that carriers absorb switching charges to competitive water carriers.

Counsel for defendant carriers endeavored to show, by testimony and argument, that this case should be decided upon the charge of

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discrimination and maintained that such discrimination as was found in the premises was justified and not undue.

Counsel for complainant and intervener endeavored, by testimony and argument, to sustain their charge that while discrimination was unquestionably shown, the case should hinge and be decided upon the reasonableness of the rate; in other words, counsel for defendant carriers insisted that the carriers could not be compelled to absorb switching charges to their competitors, and that no undue discrimination resulted from their refusal to do so, while counsel for complainant and intervener insisted that in employing belt lines or dock companies to perform a switching delivery service, in reality the rail carriers made the rails of such belt lines or dock companies additions to the lines of the carriers.

Various decisions by courts and commissions were cited by the various counsel, in some instances the same cases being cited, with different construction, by counsel for complainant, defendants and intervener, to all of which careful consideration has been given by this Commission.

I am of the opinion and find that the position of complainant and intervener is sustained by the weight of the evidence to the extent hereinafter set forth; and I further find that, while discrimination has unquestionably resulted from the practice of the rail carriers of absorbing certain switching charges and refusing to absorb others in San Francisco, and also of declining to make charge at other points in California, it is not necessary in this opinion and order to pass upon the justification of such discrimination, or to say whether it is due or undue, as I believe and find that the case should be decided upon the reasonableness of the rate, and justify such findings upon the following facts:

The testimony shows that for many years it has been the practice of the carriers defendant in this case to absorb the switching charge on deliveries in many cities in California, hereinbefore mentioned, using belt line roads or the rails of dock companies, for that purpose, that in fact San Francisco is the sole exception to that rule. It further shows that for years these carriers have used the belt line road in San Francisco to make deliveries to team tracks owned by themselves, to industry tracks owned by various industries and to wharves and piers owned by the State of California and leased to water carriers; that on such deliveries some of the switching charges were absorbed and others were not; that the practice of the carriers, while it comprehended at all times the absorption of some switching charges, was not uniform; to illustrate, the carriers always absorbed the switching charge to their own team tracks. Some of the team tracks north of Market street were owned by the belt line road and on deliveries to such team tracks the switching charge was formerly not absorbed, but several years ago the

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carriers began to absorb the switching charge to such team tracks as well as to their own. In addition to this, they absorbed the switching charge to wharves and piers but did not absorb it to industry tracks.

After the Supreme Court had affirmed the decision of the Interstate Commerce Commission in the case above referred to, to wit, case numbered 1704, in an effort to bring about uniformity between interstate and intrastate shipments, on April 1, 1915, the carriers changed their practice, as above set forth, which the Commission permitted with the understanding that if complaint was received the matter would be investigated and, as a result of such change in practice and the imposition of the switching charge on shipments to wharves and piers, this proceeding was filed with the Commission on August 19, 1915.

Ample opportunity was given the carriers defendant in this case to submit such evidence as they desired as to the reasonableness of the rates in question, as they were on notice that the reasonableness of the rates was attacked in this proceeding, but they contented themselves by declaring, through counsel, that the case should be decided upon discrimination and that in any event they could not be compelled to absorb switching charges on shipments consigned to their competitors.

I believe that the Commission is justified in assuming, and I find that the carriers accepted the rates from points or origin to such points to which they made, or now make, free deliveries as a reasonable rate; in other words, that they regarded such rate as reasonable with the full knowledge that they were absorbing the switching charge of $2.50 per car, and having found this to be a reasonable rate, I find that the collection from the shippers of a switching charge of $2.50 per car, when the shipment is destined to wharves and piers, the service in such cases being no greater than that to team or industry tracks, as shown by the testimony, results in a rate unreasonable by at least the measure of the switching charge of $2.50 per car.

I further find, as an evidence that the carriers defendant in this case regarded the rate comprehending the absorption of the switching charge as a reasonable rate, and that the obligation is laid upon such carriers to give the same rate to wharves and piers, that one of the defendant carriers, to wit, the Southern Pacific Company, has a dock in San Francisco to which they absorb the switching charge and that the other carriers defendant in this case make deliveries to this dock and also absorb the switching charge.

In the case of *Mobile Chamber of Commerce et al.* vs. ***Mobile & Ohio Railroad Company et al.***, decided May 7, 1912, the Interstate Commerce Commission, speaking through Commissioner Lane, held that where a railroad has a wharf to which its tariffs offer delivery and at which part of the shipping public is served, such wharf becomes a public

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terminal, and if all shippers are not given access to it by the boats they choose to employ, it then becomes the carrier's duty to make delivery at other available docks at the same rate.

Quoting from that decision, Mr. Lane said:

> "A railroad may not have a preferred line of steamships to the exclusion of other ships. Without doubt it may prefer one line and have more intimate relationship with such line than with others, but its duty as a common carrier by rail can not be neglected because of such arrangements. It may set aside one or more docks for the use of such allied lines so long as such practice does not conflict with its duty to give delivery at these docks to whomsoever may apply for the freight properly deliverable at that point. If it chooses to give up its entire dock facilities to some particular line, it may do so, but it must make delivery upon equal terms to other ships at that port * * *."

Again Mr. Lane says:

> "There can be no such thing as a terminal which is not a public terminal—a rate charged which only applies to certain favored connections—unless a like rate is made to some other dock or facility where a like service is rendered."

In this decision also Mr. Lane cites *Baker-Whiteley Coal Co.* vs. *B. & O. R. R. Co.*, 188 Fed. 412, as follows:

> "That a railroad company has the right to keep a pier for its own use and for the use of such transportation lines as have contract with it for transshipment, can not be denied, provided it affords to the public reasonable facilities elsewhere at equal rates * * *."

That a charge of discrimination, as well as unreasonableness of rate, could be sustained in this case, and that the decision and citations of Mr. Lane would support such charge, I believe is without question, but I also believe and find that the rate maintained by the carriers to the dock of one of them, the Southern Pacific Company, such rate comprehending the absorption of the switching charge, is further evidence that the rate from points of origin to destination, comprehending the absorption of switching charges, is regarded by the carriers as a reasonable rate.

I also desire to cite the case known as the Lighterage and Storage case decided by the Interstate Commerce Commission, July 7, 1915, I. & S. Docket No. 572, reported in 35 I. C. C. page 47. In this case the Commission upheld the practice of free lighterage service accorded by the railroads in and about New York harbor. At page 52 the Commission says:

> "The terminal floating service at New York, having been adopted by the railway companies many years ago as the natural and necessary recognition of the physical conditions, is now to be considered

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> as much a part of the transportation service of the carriers as the service rendered on their rails."

On page 53 of the same decision the Commission says:

> "It is always a question of what, under all the circumstances, is just and reasonable. This is as applicable to a practice as to a rate."

The Commission held that the imposition of certain charges for loading and unloading from lighters, where the carriers had made no charge for this service in the past, was not justified and the proposed tariffs were cancelled. In this connection, at page 61, it said:

> "The assessment of any charge for terminal handling, the service having heretofore been performed under the freight rate, would have the effect of increasing that rate and a proper justification of such an increase would involve consideration both of the line haul and the terminal service to be performed under the increased rate."

On page 62, the Commission says:

> "As the railroad companies have made an allowance to shippers for many years out of their rates, there is a presumption that the rate covers that allowance and that its discontinuance should be accompanied by a relinquishment of revenue formerly provided. There is nothing in this record to overcome this presumption."

I am not unmindful of the claims of counsel for the defendant carriers that they can not be compelled to absorb switching charges to competitors and I have given due consideration to the authorities cited in support of that position. Such contention would, in my judgment, be entitled to much greater weight if the carriers had not in the past voluntarily absorbed the switching charge to team tracks, thereby evidencing their belief that the rate comprehending their absorption of the switching charge is a reasonable one.

As this decision is based upon the reasonableness of the rate I do not feel called upon to pass upon the question of the due or undue discrimination alleged, or upon the contention of counsel for complainant and intervener that the rails of belt line roads and dock companies must be considered extensions of the defendant carriers' rails. Neither shall I give consideration in the order in this case to switching performed by the rail carriers in San Francisco and the absorption of charges made therefor, other than the switching comprehended in the complaint, to wit, that performed by the belt line north of Market street for the reason that, while the stipulation above referred to widened the issues to the extent that all switching in San Francisco might be considered,

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the testimony in the case was almost entirely confined to the switching north of Market street by the belt line.

I submit the following form of order:

ORDER.

In consonance with the findings expressed in the opinion preceding this order,

It is hereby ordered that the practice of the defendant carriers herein of making such collection of $2.50 per car on shipments consigned to wharves and docks north of Market street in San Francisco, California, be and it is hereby declared unreasonable as resulting in an unreasonable rate, and such defendant carriers are hereby ordered to discontinue such practice on or before the effective date of this order, and to put into effect the same rates and practices as are now in effect on shipments to team and industry tracks north of Market street.

It is further ordered that this opinion and order apply to and affect only the rates and practices of defendant carriers in making deliveries to points north of Market street, San Francisco, California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of November, 1915.

DECISION NO. 2927.

SAN FRANCISCO ARTICHOKE GROWERS' ASSOCIATION

vs.

OCEAN SHORE RAILROAD COMPANY.

Case No. 838.

Decided November 23, 1915.

Complainant alleges that defendant company put into effect and collected a commodity rate on shipments of artichokes from points in San Mateo County to San Francisco, while at the same time there was a lower class rate in effect, and they accordingly petition for reparation in the sum of $924.00 on shipments moving since January 30, 1912.

Held, As it has been heretofore established that the lowest rate in effect is the lawful rate to be collected by carriers, complainant awarded reparation of the difference between the class and the commodity rate on shipments of artichokes moving subsequent to August 5, 1913, the statute of limitations barring the award of reparation on prior shipments.

Chapman & Thompson, for Complainant.

A. C. Green and *F. F. Thomas*, for Defendant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

Complainant in this proceeding is an unincorporated association of persons and firms engaged in the handling of artichokes, its principal place of business being in San Francisco.

The petition filed August 5, 1915, alleges that the defendant has on file with this Commission a tariff known as Local and Proportional Freight Tariff No. 1, C. R. C. No. 4, and assesses and collects freight charges thereunder, and that said tariff contains specific commodity rates applying on artichokes from various points to San Francisco which are as follows:

To San Francisco from --	Rates in cents per ton, 2,000 pounds
	Vegetables, viz: artichokes, in packages, prepaid or guaranteed, carload minimum weight 20,000 pounds
Tunitas	325
Sealrox	325
Purisima	310
Arleta	300
Halfmoon	300
South Granada	300
Moss Beach	300
Tobin	260
Brighton	220

It further alleges that the rates as charged are excessive, illegal and in violation of the Public Utilities Act, inasmuch as they exceed the Class "C" rates provided for vegetables in connection with Pacific Freight Tariff Bureau Exception Sheet No. 1-B, C. R. C. No. 52, supplements thereto and reissues thereof, filed with this Commission by F. W. Gomph, agent, and to which the Ocean Shore Railroad became a party, January 30, 1912.

Complainant asks that reparation be made to its members on all carloads of artichokes moved from points on Ocean Shore Railroad to San Francisco subsequent to January 30, 1912, on the basis of the difference between the specific commodity rates as charged and the Class "C" rates which are contended to be the lawful rates. It particularly asks reparation in the sum of nine hundred and twenty-four dollars ($924.00), together with interest thereon from the date of collection, as per Exhibit "A" attached to the complaint. Said exhibit only sets forth such shipments as could be located in the files of consignees and is not a complete statement of the amounts alleged to be due.

The rates involved in this proceeding are the same as those considered in Application No. 1861, Decision No. 2769, wherein the Ocean

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Shore Railroad Company applied for and was granted permission to amend its tariffs and restore the artichoke rates in effect prior to January 30, 1912. The testimony given in Application No. 1861, heard on the same day as this case, September 10, 1915, was by stipulation made a part of this proceeding.

Prior to the order of the Commission in Application No. 1861 the defendant had, in its tariffs on file with the Commission, two rates applicable to shipments of artichokes from various points of origin to San Francisco, one a commodity rate which was the rate collected upon the shipments involved in this proceeding, and the other a lower rate, namely, the Class "C" rate on vegetables. The Commission has heretofore, namely, on November 11, 1910, established the following tariff regulation effective November 21, 1910:

> "In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate, provided that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate the lower combination of rates shall apply, and the carrier shall immediately make its through rate correspond to the lower combination of rates, it being the intention to give the shipper the advantage of the lowest possible rate."

Therefore, under this rule the lower rate, namely, the Class "C" rate on vegetables was the legal rate which the defendant should have charged for the shipments of artichokes involved in this proceeding. Any charge in excess of this legal rate is, of course, an excessive charge, and as to such charges the Commission is given power and must, under the provisions of the Public Utilities Act, award reparation to the amount of the excess. Section 71 of the Public Utilities Act provides:

> "SEC. 71. (*a*) When complaint has been made to the Commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the Commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the Commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; *provided*, no discrimination will result from such reparation.
>
> (*b*) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the Commission. The remedy in this section provided shall be cumulative and in addition to any other

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remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the Commission."

Inasmuch as the defendant collected rates on the shipments of artichokes involved in this proceeding in excess of the legal rates on file with the Commission, the shipper is entitled to reparation to the amount of the excess. The Commission can not, however, award reparation on all excess charges collected from complainant subsequent to January 30, 1912, as requested in the complaint, inasmuch as section 71 (*b*) of the Public Utilities Act requires that "all complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues." The complaint in this proceeding was filed on August 5, 1915. Reparation should, therefore, be awarded on all excessive charges collected subsequent to August 5, 1913.

I submit herewith the following form of order:

ORDER.

This case having come on regularly for hearing and the Commission being duly advised in the premises,

It is hereby ordered that Ocean Shore Railroad Company be and it is hereby ordered to make reparation to San Francisco Artichoke Growers' Association for all charges in excess of the Class "C" rate for vegetables filed with the Commission by said railroad and in accordance with the foregoing opinion applicable to the shipments on artichokes involved in this proceeding, collected subsequent to August 5, 1913, together with interest on the amount of the excess charges at the rate of seven per cent per annum from the date of collection thereof.

In the event that the parties to this proceeding are unable to agree upon the exact amount of the reparation due under this order, they may, within thirty days from the date hereof, report that fact to the Commission, whereupon the Commission will issue a supplemental order herein with reference to this matter.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of November, 1915.

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DECISION No. 2928.

J. W. LEGGETT AND CERTAIN OTHER RESIDENTS OF MENLO PARK AND VICINITY

vs.

BEAR GULCH WATER COMPANY.

Case No. 419.

JOHN BILLESBACK ET AL.

vs.

BEAR GULCH WATER COMPANY.

Case No. 718.

Decided November 23, 1915.

The original complaint against defendant water company alleged that its water supply was inadequate to properly serve its consumers, also that it was impure and unfit for drinking purposes, and it appearing at that time that there was a shortage of water in all parts of California, due to an unusually light rainfall and that defendant had already proceeded to increase its available supply and to clean out its reservoir and protect its water from pollution, formal action was delayed pending the completion of these improvements. Subsequently a complaint was filed attacking the rates and service of defendant.

An investigation of the conditions under which this company operates shows that though its rates are higher than those of the average water company, as it serves a suburban territory with consumers at considerable distances apart, its investment per consumer is considerably larger than the average and cost of upkeep correspondingly higher.

Held, That defendant's present revenues are not unduly high and will not be impaired though a readjustment of its present scale, especially the minimum rate, is necessary to a more equal apportionment among the different classes of consumers. Schedule embodying a minimum rate of $1.50 per month entitling consumer to 650 cubic feet; 33 cents per 100 cubic feet up to fifteen thousand; 20 cents per 100 cubic feet between fifteen thousand and forty thousand, and 17½ cents per 100 cubic feet in excess of forty thousand established to become effective within thirty days. It appearing that defendant has taken steps to increase its supply and properly safeguard its water from impurities, complaint as regards these matters dismissed.

C. L. Harkins, for John Billesback et al.

Warren Olney, Jr., of *McCutchen, Olney & Willard*, for Defendant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The defendant in these cases, the Bear Gulch Water Company, is a public utility supplying water for domestic and commercial purposes to the residents of Menlo Park and the vicinity thereof.

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The complaint in Case No. 419 was filed with this Commission on June 30, 1913. This complaint alleged that the water supplied by defendant was impure, injurious to health, of an offensive odor, and inadequate in amount. Defendant's answer, filed shortly thereafter, denied that its water so supplied was impure or injurious to health, but admitted the offensiveness of its odor and the inadequacy of the supply, claiming that such conditions were the result of natural causes and beyond its power to foresee, but that they were taking immediate steps to better and increase the supply.

The causes which led up to the filing of these complaints are so intimately connected with the physical and financial aspects of the defendant's water system that before proceeding to a discussion of the merits of these complaints, a brief exposition of these features seems advisable. A very thorough study of all the features of this particular property is shown in defendant's exhibit 2, Case 718, prepared by Herbert B. Foster, engineer for the administration department of the University of California. Mr. James Armstrong, one of the Commission's engineers, has prepared and submitted a report in the same case, which covered practically the same field. It seems necessary therefore to set forth only the most vital points.

Little information can be obtained as to the very early history of this property. The first company of record was the Corte Madera Water Company, incorporated October 28, 1863. The property of this company was sold to Milton S. Latham under bankruptcy proceedings in 1873, at which time there were seventeen consumers. Later in the same year the property was transferred by Latham to the Menlo Park Water Company and operated by them until 1890, at which time it was sold to the present corporation. At the present time no parts of the original plant are in use, nor are there any records to show the cost of this original work, which has been abandoned, or of the present structures now in use that were constructed prior to 1906. The Bear Gulch Water Company was incorporated in October, 1889, with an authorized stock issue of 5,000 shares of the par value of $100.00 per share, all outstanding. No dividends have ever been paid upon this stock. It has a funded debt of $205,000.00 in the form of first mortgage 5 per cent thirty-year gold bonds maturing in 1930. The University of California holds four-fifths of the capital stock, but prior to 1913 took little or no part in the management of the property. Since the recent death of Senator C. N. Felton, who was then president, and controlled the remaining one-fifth of the stock, the university has assumed direct and active charge of affairs. As indicative of the policy of the present management, it is interesting to note that no charge appears on this company's books for the service of president, general manager, engineer, or counsel. These

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services have been supplied free of charge to the company by various officials and employees of the university.

The supply is gravity, and its source the waters of Bear Gulch Creek emerging from the hills directly west of Menlo Park. Water is diverted by a small dam on this creek and conveyed about 21,000 feet through a 15-inch main, to an earthen storage reservoir at an elevation of about 210 feet above sea level, and having a maximum capacity of about 97,000,000 gallons. From this reservoir the supply is distributed throughout the territory served. The area of the watershed tributary to the diverting dam is about 1,640 acres, and is typical of the rolling hills extending north and south on the peninsula between San Francisco Bay and the Pacific Ocean, being heavily covered with thick growths of brush and trees. From both conservation and sanitary standpoints, the watershed is excellent. Prior to June, 1913, the system depended wholly for its supply upon the run-off from this watershed. Very meager information is available for the determination of the quantity of water flowing from Bear Gulch Creek at the diverting dam, though Mr. Foster has made an extensive examination of such records as exist. During the summer of 1913 a very serious shortage of supply occurred, occasioned by a considerable period of drought in common to the whole State, prior to this time. The following tabulation showing the seasonal precipitation in inches for Palo Alto and vicinity, will make this condition at once plain:

Season 1911-1912	26.42
Season 1912-1913	7.94
Season 1913-1914	24.84

As the inevitable result of these conditions the Bear Gulch Water Company entered upon the summer season of 1913 with practically no supply in its reservoir. Due to the resulting low state of the water in the reservoir, and the failure to clean same for a number of years prior to this time, algal growths developed. The two conditions most favorable to the growth of these micro-organisms are sunlight and water rich in mineral constituents. While the appearance of these organisms has no especial sanitary significance, many of these minute plants and animals produce, both in their growth and decay, peculiarly characteristic odors and tastes which are exceedingly disagreeable to the consumer, and no doubt provoked the complaints filed with this Commission.

Shortly after the filing of the complaint in Case No. 419 it was found that defendant had already taken steps to secure additional supply, having on June 20, 1913, entered into a contract with Mary Kellogg Hopkins to pump water from three wells situated on her property.

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Briefly, this contract provided that the water company should install its own plant, removing same upon the termination of the contract, and should pay for all water pumped at the rate of five (5) cents per 1,000 gallons, with a minimum charge of not less than $1,500.00 per annum for the years 1914 and 1915. The contract extended from June 20, 1913, to January 1, 1916, with the privilege of renewal.

On August 7, 1913, a hearing was held on Case No. 419. At this hearing it developed that the defendant had practically completed the pumping plant at the Hopkins Wells, and within a very short time would be able to sufficiently augment its supply to meet all demands. The plant was placed in operation on August 17, 1913, at a cost of $6,800.00, its maximum capacity being 7,500,000 gallons daily. The water is hard and somewhat undesirable for domestic purposes, however. Defendant immediately began pumping water from these wells into its system, and by December 31st of 1913 had delivered nearly 30,000,000 gallons for the use of its consumers. In view of these facts the Commission was of the opinion that the complaint in Case No. 419 had been satisfied. It was thought best, however, to await the outcome of another season before ordering its dismissal. Now that two periods of maximum demand have been very creditably met by defendant, and as will hereinafter appear, the service is satisfactory not only to the complainant in Case No. 419, but to defendant's other consumers, I am of the opinion that the complaint in Case No. 419 may now be dismissed, and so recommend.

The complaint in Case No. 718 was filed October 27, 1914. It alleged the water at times to be unfit for use, and the rates to be excessive and unreasonable. This Commission was requested to modify the rates to conform to the service rendered, and in particular to reduce the minimum rate. Preliminary hearing on this complaint was held on December 4, 1914, and an adjourned hearing on January 22, 1915, time intervening being allowed to defendant for the completion of certain investigations and reports. At this adjourned hearing defendant submitted the report of Mr. Foster, heretofore mentioned, admitted the previous unsatisfactory condition of its water supply, and outlined its plans for betterment. Believing the quality of the service rendered was of greater importance to the consumers at this particular time, than the rates to be paid, it was decided to postpone rate adjustment until the company had completed its improvements.

From time to time the Commission's representatives have made informal investigation of the progress of these improvements, and of the quality of service being rendered defendant's consumers. The report of the general manager of the company, made on June 7, 1915, is indicative of the good faith in which defendant has proceeded to improve

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service conditions. This report shows the following immediate improvements to have been carried out:

> Supply reservoir thoroughly cleaned; screen installed in gatehouse tower to prevent foreign matter from passing into the pipe system; systematic sampling schedule of the waters in the reservoir established to determine its biological character; a supply of copper sulphate purchased and local marginal treatments given to the reservoir to kill off the algal growths; a weir box installed on Bear Gulch Creek at the diverting dam in order to have some definite records of the run-off; uniform rules and regulations for consumers devised, and records of the company's operations systematized.

In order to give these improvements a thorough test through the late summer and fall, matters were not brought to a final hearing until November 4, 1915. All the Commission's informal investigations, and numerous letters from the consumers themselves, indicate that the service is now satisfactory. At this final hearing Mr. Billesback and other complainants stated that they were now thoroughly satisfied with the quality and quantity of the water supply, and I see no reason for further entertaining these particular complaints, and recommend that they be dismissed. This leaves for adjudication the question of the reasonableness of the present rates.

Defendant's present rates on file with this Commission are as follows:

> **For unmetered services, $2.00 per month flat rate.**
> **For metered services:**
> **25 cents per 1,000 gallons for water used up to 100,000 gallons;**
> **20 cents per 1,000 gallons for water used between 100,000 and 300,000 gallons;**
> **15 cents per 1,000 gallons for water used in excess of 300,000 gallons;**
> **Monthly meter minimum of $2.00 for 8,000 gallons or less.**

The complainant's chief objection is to the minimum monthly rate of $2.00. While it is not necessary for me to discuss in detail the justice or injustice of these present rates, for reasons which will hereinafter be set forth, I desire to present certain figures relating to the physical operations of this company in order that the situation may be entirely clear to all concerned. The tabulations which follow have been taken directly from the various reports and exhibits on file in these cases, and from the corrected annual reports submitted by defendant to this Commission.

	1913	1914
Income from water sales	$22,485 76	$19,676 57
Operation expenses—		
General plant expenses	$5,059 34	$4,192 57
Hopkins water contract	1,493 00	1,500 00
Taxes	2,633 90	2,830 25
	$9,186 24	$8,522 82

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The engineers for both this Commission and defendant have made estimates of the probable cost and depreciation annuities upon the physical properties only of this company. The figures are as follows:

	Reproduction cost new	Annuities, 4 per cent sinking fund
By company's engineer	$256,782 00	$2,968 00
By Commission's engineer	249,253 00	2,635 00

In addition to these physical properties, defendant owns 2,497.74 acres of land, 1,466.03 acres of which is used exclusively for water utility purposes. It also holds deeds to approximately 18,700 lineal feet of right of way for pipe lines, totaling 4.28 acres in area. Beyond certain statements appearing in defendant's exhibit No. 2 in Case No. 718, and the supplement thereto filed at the hearing on December 4th, very little evidence was submitted as to the value of these lands. The majority of this land either lies in or adjacent to the watershed area. Concerning the value of these lands Mr. Foster, for the company, reported: That lands in the vicinity of the reservoir were held for sale from $500.00 to $1,500.00 per acre, but that the actual value of the land was between $350.00 and $500.00 per acre. That a ranch of mountain land adjacent to the water company's property was sold in 1912 for $90.00 per acre. That the water company paid $80.00 per acre for about 250 acres of the Summit Road Ranch in 1900. Mr. Foster presented a table in his report showing the assessed valuation of these lands for the year 1914. Thirty-eight acres in the reservoir site were assessed for $263.20 per acre, while the average assessment per acre for the total 2,498 acres was $26.00 per acre. In the supplementary report to defendant's exhibit No. 2, Mr. Foster has estimated the total market value of these lands at $180,730.00 and the various rights of way at $2,640.00. One thousand three hundred fifty-five and twelve one-hundredths acres of watershed lands, claimed to be used exclusively for public utility purposes, are valued by Mr. Foster at $100.00 per acre, the reservoir lands at $500.00 per acre, the Mezes Ranch lands at $350.00 per acre, and the right of way is estimated on a basis of $500.00 per acre. Beyond the statement that water rights in Bear Gulch Creek were purchased by the original owners of this property in 1867 for $3,250.00, and by virtue of assignment now the property of this company, defendant did not present during the course of this complaint any claims for water rights, going concern, or franchise values. I do not believe there is sufficient evidence in this case upon which to base any estimates as to the worth of these lands or water rights, and for reasons which will hereinafter appear, it does not seem necessary to further indicate such values as may or may not exist in this company's land holdings or intangibles.

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A little study of the tabulations just given indicates that defendant has barely been able to meet the interest upon its outstanding bonds, and has been unable to lay aside any reserve for accrued depreciation.

As is natural, the consumer is as a rule only vitally interested in the direct result as applied to his own individual case. In this particular instance he has drawn an unfavorable comparison between the rates as charged by defendant, and those charged by the municipal water plants of the two neighboring cities of Palo Alto and Redwood City. In this regard I desire to point out that no two water utilities operate under the same set of conditions, and this particular utility has certain features which are unique and peculiar to itself. The table which follows, while only approximate, gives a fair comparison of the distinctions between water service conditions of Menlo Park, Palo Alto and Redwood City.

	Menlo Park	Palo Alto	Redwood City
	Bear Gulch Water Company	Municipal plant	Municipal plant*
Approximate area served, square miles	8	1	1.5
Miles of pipe line	44.8	20	40
Number of services	450	†1,382	†700
Number of services per square mile	56	1,382	466
Number of services per mile of pipe line	10	69	18
Approximate cost physical equipment per service	$550	$72	----------
Average pressure in distributing system, pounds per square inch	60	35	70
Quality of water	Soft	Hard	Hard

*Water purchased wholesale from the Redwood City Water Company. Distribution system only owned by municipality.
†All commercial services metered.

An analysis of these statistics shows that the defendant is operating under conditions very unfavorable for profit. The territory served by the Bear Gulch Water Company consists largely of large estates, which are unlikely to be subdivided, and the number of consumers will increase very slowly. The increase in the number of active services in the past five years has been less than at the rate of eight per year. The scattered location of these consumers demands an extensive distributing system, resulting in unusually high installation cost per service. The water system of the cities of Palo Alto and Redwood City attempt to sell water to consumers at cost, thus attracting new residents and manufacturing interests, and encouraging those present in the community to use water abundantly, and make their surroundings beautiful with lawns, shrubs and trees. In contrast to this, defendant is a privately owned corporation endeavoring to earn sufficient money to pay the regular maintenance and operation expenses, taxes, depreciation, and interest on its bonds. That the company, however, realizes that it

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has an unusually large investment for the consumers it serves, is indicated by its desire to adjust its rates in any manner which will result in the greatest benefit to its customers, and at the same time not impair such income as it believes absolutely necessary to meet its fixed annual charges. Its tacit waiving at this time of any return upon such investment as it has in its watershed lands, its water rights, going concern, and other intangibles, seem to me to be an admission that it can not burden, under the conditions as they now exist, its present limited number of consumers with an investment, which, measured by comparative standards, would result in unreasonable and excessive rates. On the other hand, it is the duty of the consumers, if they are so situated that this investment is absolutely necessary to render them the service which they desire, to bear a reasonable share of the burden until the settling up of the community, and the consequent increase in the number of consumers, results in a lower cost of rendering service to each individual consumer.

The principle of the minimum charge seems so firmly established that any discussion of its justice is unnecessary here. It has been the policy, however, of this Commission, to fix the amount of such minimum charge so that the results for which it is necessarily established, may be obtained, and at the same time render equity to those customers whose needs are either satisfied by a small amount of water, or who, for reasons of economy, restrict their use of water. Defendant's monthly minimum rate of $2.00 is in excess of the great majority of the minimum rates charged by water companies throughout the State, and the amount of water allowed for this minimum is also in excess of the needs of many of its consumers. A thorough study of water use under this system has been made by both the engineers of the Commission and the company, a continuous twelve months' record, ending November 1, 1915, of each individual consumer's use, having been obtained and tabulated. These records show that the average number of consumers for this period was 385, of which 248 were metered and 137 on the flat rate. Of the metered consumers 131, or 53 per cent, did not pay on an average, in excess of the minimum charge of $2.00, while 118 of them, or 48 per cent, used on an average 750 cubic feet or less per month. While it is true that about 36 per cent of all of defendant's customers are flat-rate users, and as such pay only a minimum monthly rate of $2.00, and that it is impossible to accurately estimate what such customers would pay if their use was metered, it is equally true that this company has made a very careful endeavor to meter any and all customers, whose use they have good reason to believe will exceed $2.00 under the metered rate, and I am convinced from a careful study of these records of use, that fully 70 per cent of this company's consumers would be materially affected by any change in the minimum rate. These records indicate

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that the majority of these consumers do not use the amount, and in many cases nowhere near the amount which they are allowed under the minimum rate. That this situation is manifestly unjust to these consumers, and should be remedied, provided it does not work any injustice to the utility in question, goes without saying. In view of all the statistics which I have heretofore presented relative to the operation of this company, I do not feel it incumbent upon me to reduce the total gross income which this company must necessarily receive in order to meet its fixed annual charges, for the purpose of rendering adequate service, but on the other hand, I am of the opinion that a more equitable distribution of the charges for the service rendered, can be secured by an adjustment of the present rates.

Before proceeding to set forth the rates which I shall recommend, I desire to call attention to a certain situation affecting the annual revenues of this company. In pursuance of a certain deed between James Flood and the Bear Gulch Water Company, and for consideration received, the water company has agreed to furnish Mr. Flood, his heirs and assigns, forever, without charge, such water as is necessary for certain specified uses. I am of the opinion that when a free use of any such commodity is furnished in return for property used by a public utility (which class of property was the consideration in this particular case), such free use being a continuing use, a value should be placed upon the property so acquired by the utility, independent of the arrangements made for this continuing use, and if the property so involved and valued is necessary to the operation of the utility, it should be considered a portion of the entire value of the utility's plant, and the commodity delivered for the service rendered annually under such arrangements, should be computed at the same rate as other services of like nature and considered as part and parcel of the utility's income. Following the reasons set forth above I have included in the gross annual income which defendant derives from the sale of its water such revenues as it would derive from the delivery of its water under the agreement heretofore mentioned, and at the rates charged for like service.

The rates which I shall recommend at this time are for the purpose of meeting the present conditions. The conditions under which this water plant is operated are gradually changing, and no doubt at some future time the rates which I recommend will have to be modified to meet the conditions then existing.

I submit herewith the following form of order:

ORDER.

Public hearings having been held in the above entitled proceedings, and the matters contained therein being now submitted and ready for

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decision, the Commission hereby finds as a fact that the rates herein established are just and reasonable rates to be charged by the Bear Gulch Water Company for water, and that the existing rates of said company are unjust and unreasonable in so far as they differ from the rates so established;

And the Commission further finds as a fact that the Bear Gulch Water Company has made certain improvements in its system, leading to the conservation and protection of its water supply, and that it has in its possession a sufficient supply of potable water to meet the needs of all its consumers, provided that reasonable care is taken for the further protection and conservation of such supply.

Basing its order on the foregoing findings of facts, and the further findings of fact contained in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California, that the Bear Gulch Water Company establish and file with the Railroad Commission, within thirty days from the date of the order herein, the following rates for water:

For unmetered services, $1.50 per month flat rate.

For metered services:

23 cents per 100 cubic feet for water used up to 15,000 cubic feet;

20 cents per 100 cubic feet for water used between 15,000 and 40,000 cubic feet;

17½ cents per 100 cubic feet for water used in excess of 40,000 cubic feet;

Monthly meter minimum of $1.50 for 650 cubic feet, or less.

Provided that based upon the size of meter service and connection the following schedule of minimum monthly rates shall apply:

For ⅝-inch or ¾-inch meter and service	$1 50
For 1-inch meter and service	2 50
For 1½-inch meter and service	3 50
For 2-inch meter and service	4 50
For 3-inch meter and service	6 00

For meters and service connections larger than shown herein, minimum monthly rates in proportion.

And it is further ordered that in all other respects the complaints herein are hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 23d day of November, 1915.

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DECISION NO. 2929.

IN THE MATTER OF THE APPLICATION OF SOUTH LOS ANGELES WATER COMPANY (1) FOR AN ORDER AUTHORIZING THE SALE OF ALL OF ITS PROPERTY TO THE SOUTH LOS ANGELES LAND AND WATER COMPANY; (2) FOR AN ORDER AUTHORIZING THE SOUTH LOS ANGELES WATER COMPANY TO ACQUIRE SEVENTEEN HUNDRED SHARES OF THE CAPITAL STOCK AND ONE HUNDRED THOUSAND DOLLARS OF FIRST MORTGAGE BONDS OF THE SOUTH LOS ANGELES LAND AND WATER COMPANY; (3) FOR AN ORDER AUTHORIZING THE SOUTH LOS ANGELES LAND AND WATER COMPANY TO PURCHASE THE PROPERTY OF THE SOUTH LOS ANGELES WATER COMPANY.

Application No. 1430.

Decided November 23, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission by Decision No. 2178, dated February 27, 1915, authorized South Los Angeles Land and Water Company to issue $75,000.00 face value of 6 per cent twenty-year serial bonds; and

Whereas applicant now requests that the order of this Commission found in Decision No. 2178, dated February 27, 1915, be amended so as to permit it to issue $75,000.00 face value of 6 per cent sixteen-year serial bonds in lieu of $75,000.00 face value of 6 per cent twenty-year serial bonds heretofore authorized; and

Whereas applicant has submitted for approval a copy of its mortgage or deed of trust securing the payment of $75,000.00 face value of 6 per cent sixteen-year serial bonds, said mortgage or deed of trust having been marked Exhibit No. 1 and attached to the application herein, and good cause appearing,

It is hereby ordered that the order of this Commission found in Decision No. 2178, dated February 27, 1915, be and the same is hereby amended so as to permit South Los Angeles Land and Water Company to issue $75,000.00 face value of 6 per cent sixteen-year serial bonds in lieu of $75,000.00 face value of 6 per cent twenty-year serial bonds heretofore authorized.

It is hereby further ordered that South Los Angeles Land and Water Company be given and it is hereby given authority to execute to Los Angeles Trust and Savings Bank, trustee, a mortgage or deed of trust substantially in the same form and tenor as the mortgage or deed of trust submitted to this Commission and marked Exhibit No. 1.

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The approval herein given of said mortgage is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to any other legal requirements to which said mortgage may be subject.

It is hereby further ordered that the order of this Commission found in Decision No. 2178, dated February 27, 1915, shall remain in full force and effect except as amended by this first supplemental order.

Dated at San Francisco, California, this 23d day of November, 1915.

DECISION No. 2930.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY OF CALIFORNIA FOR PERMISSION TO ISSUE STOCK.

Application No. 1974.

Decided November 24, 1915.

Applicant applies for and is granted permission to issue 14 shares of its common capital stock of the par value of $100.00 per share, such stock is to be issued to qualify directors, one share each to twelve directors and two shares to another, proceeds thereof to be used to cover organization expenses.

Chaffee E. Hall, for Applicant.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

This is an application by Great Western Power Company of California for an order authorizing the issue at par of fourteen shares of its common capital stock of the par value of $100.00 per share.

Great Western Power Company of California was organized November 22, 1915. To qualify the directors appointed by the articles of incorporation it is necessary to issue to them the stock for which they have subscribed. Heretofore this Commission has given general authorization to issue one share of stock to each director. In the present case, one of the directors is to receive two shares and therefore an order from this Commission authorizing the issuance of the stock becomes necessary.

Representative for applicant stated that the proceeds to be obtained from the sale of the stock will be used to pay the expenses of incorporation and organization.

I am of the opinion that applicant's request should be granted and herewith submit the following form of order:

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ORDER.

Great Western Power Company of California having applied to this Commission for an order authorizing it to issue $1,400.00 par value of common capital stock at par, and a hearing having been held, and the Commission finding that the purposes for which said company desires to issue said stock are not in whole or in part reasonably chargeable to operating expenses or to income, and it appearing to the Commission that the application herein should be granted,

It is hereby ordered by the Railroad Commission of the State of California that Great Western Power Company of California be and it is hereby authorized to issue $1,400.00 par value of its common capital stock.

The authority herein given is given upon the following conditions and not otherwise:

(1) The stock herein authorized to be issued shall be issued by Great Western Power Company of California at not less than the par value thereof.

(2) The stock herein authorized to be issued shall be issued to the following persons:

Name	Number of shares	Par value
Mortimer Fleishhacker	2	$200
Guy C. Earl	1	100
W. H. Spaulding	1	100
Chaffee E. Hall	1	100
Washington Dodge	1	100
James Irvine	1	100
P. W. Ham	1	100
E. Mackennal	1	100
William Forrest	1	100
H. A. Cooke	1	100
L. A. Reynolds	1	100
W. F. Eccles	1	100
J. A. Koontz	1	100

(3) The proceeds to be obtained from the sale of stock herein authorized shall be used by Great Western Power Company of California to pay organization expenses.

(4) Great Western Power Company of California shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application

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of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(5) The authority herein given to issue stock shall apply to such stock as may be issued on or before December 15, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of November, 1915.

DECISION NO. 2931.

NEVADA CALIFORNIA-OREGON RAILWAY

vs.

FEATHER RIVER LUMBER COMPANY.

Case No. 832.

Decided November 24, 1915.

James Glynn, for Complainant.

L. W. Peters, for Defendant.

REPORT OF THE COMMISSION.

Whereas, the complaint was filed herein on July 23, 1915, wherein complainant alleged that the Feather River Lumber Company is using the tracks of complainant without authority because a contract previously entered into between complainant and defendant was in violation of section 51 (*a*) of the Public Utilities Act, and it was desired and requested that the Commission require the Feather River Lumber Company to desist from using the tracks of complainant; and

Whereas, on October 25, 1915, there was filed, jointly by the parties hereto, an agreement covering the use of the tracks mentioned in the complaint, which agreement provided under what terms and conditions the tracks shall be used and the payment the Feather River Lumber Company is to make to complainant for their use; and

Whereas, it is apparent that the filing of this agreement will make a hearing in this case unnecessary upon the original complaint, and there appears to the Commission to be no reason why the said agreement filed herein on October 25, 1915, should not be approved and this case dismissed.

ORDER.

It is hereby ordered that the said agreement filed with the Commission on October 25, 1915, by the Nevada-California-Oregon Railway,

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a corporation, and Feather River Lumber Company, a corporation, providing conditions for the joint use of tracks of the Nevada–California–Oregon Railway between Clio, California, and Delleker, California, including the Cleareville spur and other spurs and side tracks, be and the same is hereby approved.

It is further ordered that this case in all other respects be and the same is hereby dismissed.

Dated at San Francisco, California, this 24th day of November, 1915.

DECISION No. 2932.

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED WATER COMPANY OF POMONA FOR AUTHORITY TO INCREASE ITS BONDED INDEBTEDNESS TO THE TOTAL SUM OF TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS.

Application No. 1762.

Decided November 24, 1915.

Applicant was heretofore authorized to issue two hundred and twenty-five thousand dollars face value of its bonds conditioned upon the subsequent approval of its trust deed and the purposes for which the proceeds of such bonds were to be used, and a form of trust deed having been submitted, together with a list of promissory notes which it desires to refund with the proceeds of such bonds, final authorization granted.

Parker & Parker, for Applicant.

C. W. Guerin, for City of Pomona.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

Subject to the conditions, hereinafter stated, this Commission by its Decision No. 2668, dated August 14, 1915, authorized Consolidated Water Company of Pomona to issue $225,000.00 face value of first mortgage 6 per cent twenty-year bonds. The decision provides that no bonds shall be issued until after this Commission has issued its supplemental order approving applicant's mortgage or deed of trust, securing the payment of said bonds; fixing the minimum price at which the bonds may be sold; setting forth the specific purposes for which the proceeds to be obtained from the sale of the bonds may be used and such other conditions as the Commission may deem proper.

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Applicant has submitted for approval a copy of its proposed mortgage or deed of trust, which has been marked Exhibit No. 1.

Applicant requests that it be permitted to issue its bonds at par less a commission of 3 per cent, and that it be permitted to use the proceeds to be obtained from the sale of the bonds for the following purposes:

To pay the present bonded indebtedness	$175,000
To pay H. B. Davis, note	9,000
To pay B. C. Lattin, note	24,000
To pay Wash Hunt, note	3,000
To pay Thos. B. Evans, note	2,500
To pay L. C. Meredith	3,000
To pay Blankenhorn, Hunter Company, commission and discount on the sale of bonds	6,750
To pay Title Insurance and Trust Company, certificate of title	750
To pay attorneys' fees, Parker & Parker and O'Melveny, Stevens & Milliken, for preparing deed of trust and certifying to the validity of the bonds, etc.	1,000
Total	$225,000

The issuance of the above mentioned notes has heretofore been authorized by this Commission.

The sum of $6,750.00, representing commission and discount on the sale of the bonds, together with the sum of $1,750.00, representing attorney fees and fees for the certification of title, are not proper capital expenditures. The $8,500.00, the sum of the two items, is an expenditure incidental to the sale of the bonds and should be amortized during the life of the bond. The proceeds to be obtained from the sale of the bonds may not be applied to such purposes. However, reports on file with this Commission show that the company has invested in its plant out of earnings an amount in excess of $8,500.00, for which the company may reimburse its treasury through the sale of bonds. Subject to the modification suggested, I recommend that applicant's request be granted and herewith submit the following form of supplemental order:

FIRST SUPPLEMENTAL ORDER.

Consolidated Water Company of Pomona having applied to this Commission for a supplemental order approving its mortgage or deed of trust, marked Exhibit No. 1, to which reference has been made in the foregoing first supplemental opinion, fixing the minimum price at which the bonds may be sold, and specifying the purposes for which the proceeds to be obtained from the sale of the bonds may be used;

And the Commission finding that the purposes for which said company desires to issue said bonds are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Consolidated Water Company of Pomona be given and it is hereby given authority to issue $225,000.00 face value of 6 per cent twenty-year bonds at par, less a commission of 3 per cent.

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It is hereby further ordered that Consolidated Water Company of Pomona be given and it is hereby given authority to execute a mortgage or deed of trust substantially in the form and tenor as the mortgage or deed of trust submitted to this Commission in connection with this proceeding and marked Exhibit No. 1.

The authority granted herein is given upon the following conditions and not otherwise:

(1) The proceeds obtained from the sale of the bonds shall be used for the following purposes only:

(*a*)	To pay and refund present bonded indebtedness of	$175,000
(*b*)	Note payable to H. B. Davis	9,000
	Note payable to B. C. Lattin	24,000
	Note payable to Wash Hunt	3,000
	Note payable to Thos. B. Evans	2,500
	Note payable to L. C. Meredith	3,000
(*c*)	To reimburse applicant's treasury in the sum of	8,500
	Total	$225,000

(2) The approval herein given of said mortgage is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to any other legal requirements to which said mortgage may be subject.

(3) The authority herein granted shall not become effective until the payment by applicant of the fee prescribed in section 57 of the Public Utilities Act, as amended.

(4) Consolidated Water Company of Pomona shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(5) The authority herein granted shall apply only to such bonds as may be issued on or before October 1, 1916.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of November, 1915.

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Decisions Nos. 2933, 2934, 2935, and 2936, grade crossings; not printed. See end of volume.

Decision No. 2937.

IN THE MATTER OF THE APPLICATION OF MOUNTAIN LIGHT AND WATER COMPANY AND F. A. CODY FOR AN ORDER AUTHORIZING THE SALE OF BEN LOMOND WATER WORKS.

Application No. 1582.

Decided November 27, 1915.

Report of the Commission.

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission in Decision No. 2328, dated April 25, 1915, directed Mountain Light and Water Company to make application for, and secure from the Commission a supplemental order approving the issue of notes to H. Currie in the sum of $5,000.00 and the mortgage and deed of trust securing the same; and

Whereas the evidence submitted in connection with Application No. 1940 shows that the notes executed to H. Currie were for a term of one year, the issuance of which is valid without an order from this Commission; and

Whereas Mountain Light and Water Company has been authorized by a decision, rendered in pursuance to Application No. 1940, to issue stock and bonds for the purpose of acquiring the electric light and water plants of Brookdale Land Company, and to pay outstanding indebtedness amounting to $9,700.00, said indebtedness of $9,700.00 including notes in the sum of $5,000.00 executed to H. Currie referred to in Decision No. 2328, dated April 25, 1915; and

Whereas the payment of the notes executed to H. Currie will satisfy his claims against Mountain Light and Water Company,

It is hereby ordered that the provisions of the order, found in Decision No. 2328, dated April 24, 1915, relating to the filing of an application for, and securing from the Commission a supplemental order approving the issues of notes to H. Currie in the sum of $5,000.00 and the mortgage or deed of trust securing the same be and the same is hereby vacated and set aside.

It is hereby further ordered that the order found in Decision No. 2328, dated April 24, 1915, shall remain in full force and effect except as modified by this first supplemental order.

Dated at San Francisco, California, this 27th day of November, 1915.

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DECISION No. 2938.

IN THE MATTER OF THE APPLICATION OF OTAY VALLEY WATER COMPANY FOR AUTHORITY TO INCREASE THE WATER RATES.

Application No. 1871.

Decided November 27, 1915.

Applicant applies for permission to increase its water rates, and after investigation the following schedule is established to become effective within thirty days: Minimum per month entitling consumer to 600 cubic feet, $1.25; amounts over 600 cubic feet, 15 cents per 100.

W. S. Broderick, for Applicant.

E. L. Thomas, for water users.

REPORT OF THE COMMISSION.

This is an application for an increase in rates charged for water furnished the residents of the tracts known as Broderick's Otay Acres and Woodlawn Park, in San Diego County.

The Otay Valley Water Company was incorporated for the purpose of installing a water system to supply the above named tracts, which were subdivided and placed on the market by the owners of both the land and the utility.

The company receives its water supply from the Coronado Water Company and distributes it to the residents of these tracts.

The company at present is selling water at the rate of 10 cents per 1,000 gallons, with a minimum charge of $1.00 per month for 10,000 gallons, or less. There are no written contracts between the company and purchasers of the land as to rates to be charged for water, nor has the company ever sold any of the land within the tracts with the understanding of any permanent water rates to investors.

The Coronado Water Company charges applicant 12 cents per 1,000 gallons or 2 cents per 1,000 gallons more than the applicant receives from its consumers. The company now asks permission to collect twenty-five cents per 1,000 gallons, with a minimum charge of $2.00 per month.

A public hearing in this proceeding was held on Tuesday, September 28th, at San Diego. At the hearing the hydraulic engineers of the Commission submitted an appraisal by which it was estimated that the cost new of the physical properties and the real estate necessary to the water system is $8,041.00, annual depreciation on the plant, $312.00 and the cost new less depreciation, $6,166.00. The evidence shows the annual maintenance and operating expense to be approximately $375.00.

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The water system is built to serve one hundred and sixty one-acre lots. At the present time there are eighteen houses on the tracts and eight of these are now occupied. The system, although built to serve the entire tracts, at present supplies only one-twentieth of the lots.

The Commission has discussed fully in a number of cases, particularly in the case of the City of Huntington Beach versus Huntington Beach Company, 5 C. R. C. 273, and in Rogers et al. versus Sacramento Valley West Side Canal Company, Decision No. 2483, the injustice of charging against present consumers a system built unreasonably beyond present demands. Economical construction requires that the system be somewhat larger than necessary for present use but not to the extent manifested here.

After considering all the facts of this case, and bearing in mind the fair value to be assigned to that portion of the company's capital investment which is justly chargeable to the present consumers, we find that the following rates will be just and reasonable to be charged by the applicant herein to its consumers:

Minimum per month for any use entitling consumer to 600 cubic feet, $1.25.
Amounts over 600 cubic feet per month, 15 cents per 100 cubic feet.

ORDER.

Application having been made by the Otay Valley Water Company for permission to increase the rates charged by them to consumers for water, and a public hearing having been held and the matter having been submitted,

It is hereby found as a fact by the Railroad Commission of the State of California that the present rates being charged by Otay Valley Water Company for water delivered to consumers in what are known as Broderick's Otay Acres and Woodlawn Park, in so far as they differ from the schedule of rates herein found reasonable, are noncompensatory, and that the rates set out in the following order are just and reasonable rates to be charged for water delivered to consumers.

Basing its order upon the foregoing finding of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that the Otay Valley Water Company be and said company is hereby authorized to put into effect within thirty days from the date of this order the following schedule of rates to be charged for water in what are known as Broderick's Otay Acres and Woodlawn Park tracts, San Diego County:

Minimum per month for any use entitling consumer to 600 cubic feet, $1.25.
Amounts over 600 cubic feet per month, 15 cents per 100 cubic feet.

Dated at San Francisco, California, this 27th day of November, 1915.

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DECISION No. 2939.

IN THE MATTER OF THE APPLICATION OF PETALUMA AND SANTA ROSA RAILWAY COMPANY FOR AUTHORITY TO ISSUE COUPONS FOR INTEREST TO ACCRUE ON BONDS.

Application No. 1967.

Decided November 27, 1915.

Applicant having bonds outstanding which fall due April 1, 1915, and it not being in a position to retire such bonds at that time, applies for permission to issue three sets of $30.00 coupons falling due respectively on April 1, and October 1, 1916, and April 1, 1917, these coupons not to be capitalized but to be paid from earnings, and it appearing that such request is reasonable, applicant authorized to issue the two sets falling due October 1, 1916, and April 1, 1917, respectively, the first set falling due in less than one year, no authorization is necessary.

Edwin T. McMurray, for Applicant.

REPORT OF THE COMMISSION.

This is an application by Petaluma and Santa Rosa Railway Company, a corporation, hereinafter referred to as the "railway company," for an order authorizing the issue of 6 per cent interest coupons to be attached to applicant's second mortgage bonds, three of said coupons to be attached to each bond and to be payable April 1, 1916, October 1, 1916, and April 1, 1917, respectively.

From the evidence it appears that said bonds were dated April 1, 1905, and matured April 1, 1915, being of the denomination of $1,000.00 each and bearing interest at the rate of 6 per cent per annum, payable semiannually on the first days of April and October in each year; that there were at the beginning of 1915, and still are, 217 of said bonds outstanding and unpaid out of the total authorized issue under said second mortgage of 250 of such bonds.

It further appears that prior to their maturity the railroad company, being at that time unable to pay the principal upon said bonds or to refund the same by the issue of new securities, entered into an agreement with the holders of all but seven of said outstanding bonds, by which the bondholders agreed not to present their bonds for payment or to authorize foreclosure of the mortgage securing the same before April 1, 1917 (providing semiannual interest should be regularly paid in the mean time), in consideration of which said railway company paid to the respective bondholders a cash bonus of $10.00 upon each of their bonds, and agreed to issue and attach to each of said bonds four interest coupons for $30.00 each, said coupons maturing on October 1, 1915, April 1 and October 1, 1916, and April 1, 1917; said coupons to be similar to the interest coupons originally attached to said bonds.

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Thereafter the railway company proceeded to issue and attach to each of said 210 outstanding bonds said four interest coupons, without having first obtained authorization therefor from this Commission. It appears from the evidence, however, that said railway company and its officers acted throughout in good faith, proceeding upon the theory that these interest bearing coupons were not evidence of indebtedness, and that when the matter was called to the railway company's attention it filed the present application for authority to issue coupons for the interest accruing upon all of said outstanding bonds on April 1 and October 1, 1916, and April 1, 1917. Said proposed coupons are in the following form, to wit:

No. _____ $30.00

On the first day of _____, 191__, the Petaluma and Santa Rosa Railway Company will pay to the bearer hereof thirty dollars ($30) in gold coin of the United States of the present standard of weight and fineness at the office of the Mercantile Trust Company of San Francisco, in the city and county of San Francisco, State of California, or at the office of the United States Mortgage and Trust Company, in the city of New York, state of New York, at the option of the holder hereof, being the interest then due on its second mortgage 6 per cent gold bond No. _____.

_____,
Treasurer.

It appears that none of said coupons was issued prior to April 1, 1915, and accordingly it was not necessary for the railway company to obtain authority from this Commission to issue those maturing on October 1, 1915, and April 1, 1916, respectively, and it is not necessary for the railway company to issue new coupons in place of those maturing on April 1, 1916.

As to the remainder, the company originally claimed that the consent of this Commission was not necessary, upon the theory that these interest coupons represent no new obligations on the part of the railway company, inasmuch as the said outstanding bonds provide that interest shall be paid until the bonds are refunded, and that the interest coupons are merely convenient memoranda of the fact of the existing indebtedness. Section 52 of the Public Utilities Act, however, requires the consent of this Commission to the issuance of evidences of indebtedness payable at periods of more than twelve months from the date thereof. Assuming that these evidences of indebtedness are being issued for a pre-existing obligation, we are nevertheless clearly of the opinion that the consent of this Commission is necessary for those maturing more than one year after the date of issue.

ORDER.

Petaluma and Santa Rosa Railway Company having applied to the Railroad Commission for an order authorizing the issue of $30.00

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coupons, three of which, falling due respectively on April 1 and October 1, 1916, and April 1, 1917, are to be attached to each of said 217 outstanding 6 per cent second mortgage bonds referred to in the foregoing opinion;

And a public hearing having been held on said application and the Commission finding that applicant's request is reasonable and should be granted, and that the purposes for which applicant desires to issue said coupons are chargeable to income, in that they represent interest hereinafter to be paid upon applicant's bonds, and it appearing that said coupons will not be capitalized but will be paid out of applicant's income,

It is hereby ordered that Petaluma and Santa Rosa Railway Company be and the same is hereby authorized to issue said above mentioned interest coupons for $30.00 each, maturing on October 1, 1916, and April 1, 1917, respectively, as evidence of the interest to accrue on each of said 217 bonds outstanding.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Said coupons shall be issued only to evidence or represent interest to become due at the above dates upon applicant's second mortgage bonds now outstanding.

2. Said coupons shall not be issued except upon the return to the railway company and the cancellation of the corresponding coupons heretofore illegally issued by said railway company.

3. Within thirty days after the coupons herein authorized to be issued shall have been issued, applicant shall report such fact to this Commission, together with a statement of the number of coupons so issued, the dates of their maturity and the persons to whom they were issued.

4. The coupons herein authorized to be issued shall be issued on or before March 1, 1916.

5. This order shall not become effective until Petaluma and Santa Rosa Railway Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 27th day of November, 1915.

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Decision No. 2940.

IN THE MATTER OF THE APPLICATION OF THE ALTURAS ELECTRIC POWER COMPANY FOR AN ORDER VALIDATING THE RENEWAL OF CERTAIN NOTES.

Application No. 1900.

Decided November 29, 1915.

Report of the Commission.

ORDER OF DISMISSAL.

Applicant in the above entitled matter having, on November 29, 1915, made written request that this proceeding be dismissed,

It is hereby ordered that the same be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 29th day of November, 1915.

Decision No. 2941.

IN THE MATTER OF THE APPLICATION OF SACRAMENTO VALLEY TELEPHONE COMPANY FOR AUTHORIZATION TO CREATE A BONDED INDEBTEDNESS OF FIVE HUNDRED THOUSAND DOLLARS, TO EXECUTE A DEED OF TRUST TO SECURE THE SAME, TO PURCHASE PROPERTY, TO ISSUE STOCK AND BONDS FOR CASH AND FOR PROPERTY AND TO OPERATE UNDER VARIOUS FRANCHISES; OF GLENN COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY; OF TEHAMA COUNTY TELEPHONE COMPANY FOR AUTHORIZATION TO SELL ITS PROPERTY FOR CASH, BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY AND OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY FOR AUTHORIZATION TO SELL CERTAIN PROPERTY FOR BONDS AND STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY AND TO SUBSCRIBE FOR STOCK OF SACRAMENTO VALLEY TELEPHONE COMPANY.

Application No. 1680.

Decided November 29, 1915.

Applicants were heretofore authorized to transfer certain telephone properties and to issue stock and bonds, such authorization being made subject to certain conditions with reference to future claims for franchise values, etc., and all of such conditions having been satisfied by applicants, final approval given and original

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order amended to permit the payment of $10,500.00 to Pacific Telephone Company in part consideration for a note due and moneys advanced, instead of $10,000.00 as heretofore provided.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas this Commission by Decision No. 2580, dated July 8, 1915, authorized Tehama County Telephone Company and Glenn County Telephone Company to sell and transfer their property to Sacramento Valley Telephone Company, also authorized the Pacific Telephone and Telegraph Company to sell and transfer to Sacramento Valley Telephone Company certain property located in Glenn and Tehama counties, and authorized Sacramento Valley Telephone Company to issue $193,500.00 par value of stock and $190,000.00 face value of bonds; and

Whereas the authority granted by said Decision No. 2580, dated July 8, 1915, is subject to certain conditions, one of which condition requires applicants herein to file a resolution adopted by board of trustees of the town of Willows, approving the sale of the franchise granted by town of Willows to Glenn County Telephone Company to Sacramento Valley Telephone Company; another condition requires Sacramento Valley Telephone Company to file a stipulation with this Commission to the effect that it shall agree that the value for rate fixing purposes, or for purchase or condemnation by public authority to be placed upon the franchises which it is authorized to acquire from Glenn County Telephone Company and Tehama County Telephone Company shall be a sum not in excess of the original cost of said franchises; another condition requires Sacramento Valley Telephone Company to submit to this Commission for approval a copy of the proposed mortgage or deed of trust securing the payment of its first mortgage 6 per cent twenty-year gold bonds; and

Whereas, in a supplemental application filed with this Commission November 27, 1915, applicants herein have filed a resolution, marked Exhibit "L," adopted by board of trustees of town of Willows, approving the sale and transfer of the aforesaid franchise to Sacramento Valley Telephone Company by Glenn County Telephone Company; also a stipulation, marked Exhibit "M," wherein Sacramento Valley Telephone Company agrees that the value for rate fixing purposes or for purchase or condemnation by public authority to be placed upon the aforesaid franchises shall be a sum not in excess of the original cost of said franchises, also a copy of the proposed mortgage or deed of trust, marked Exhibit "K," executed by Sacramento Valley Telephone Company to Mercantile Trust Company of San Francisco, said mortgage or deed of trust being dated December 1, 1915; and

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Whereas applicants request that subdivision *e* of condition No. 4 now reading—

The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	$68,000
2. In part payment for property of Tehama County Telephone Company	43,500
3. In part payment of note due the Pacific Telephone and Telegraph Company for funds advanced	10,000
4. To be retained for working capital	3,000
Total	$124,500

Be amended so as to read:

The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	$68,000
2. In part payment for property of Tehama County Telephone Company	43,500
3. In payment of note due the Pacific Telephone and Telegraph Company for funds advanced	10,500
4. To be retained for working capital	3,000
Total	$125,000

And good cause appearing,

It is hereby ordered that the stipulation, marked Exhibit "M," wherein Sacramento Valley Telephone Company agrees that the value for rate fixing purposes, or for purchase or condemnation by public authority, to be placed upon the franchises which it is authorized to acquire from Glenn County Telephone Company and Tehama County Telephone Company shall be a sum not in excess of the original cost of the said franchises, be and the same is hereby approved.

It is hereby further ordered that Sacramento Valley Telephone Company be given and it is hereby given authority to execute a mortgage or deed of trust in substantially the same form and tenor as the mortgage or deed of trust filed with this Commission and marked Exhibit "K." The approval herein given of said mortgage is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of said mortgage as to any other legal requirements to which said mortgage may be subject.

It is hereby further ordered that subdivision *e* of condition No. 4 of the order found in Decision No. 2580, dated July 8, 1915, reading—

The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	$68,000
2. In part payment for property of Tehama County Telephone Company	43,500
3. In part payment of note due the Pacific Telephone and Telegraph Company for funds advanced	10,000
4. To be retained for working capital	3,000
Total	$124,500

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Be and hereby is amended so as to read:

The cash received from the sale of said stock shall be used by Sacramento Valley Telephone Company as follows:

1. In part payment for property of Glenn County Telephone Company	$68,000
2. In part payment for property of Tehama County Telephone Company	43,500
3. In payment of note due the Pacific Telephone and Telegraph Company for funds advanced	10,500
4. To be retained for working capital	3,000
Total	$125,000

The Railroad Commission hereby finds as a fact, for the purpose of this proceeding, that the parties to this proceeding have filed the documents and instruments referred to in the order of July 8, 1915, herein, and have thus complied with the conditions of said order.

It is hereby further ordered that the order found in Decision No. 2580, dated July 8, 1915, shall remain in full force and effect except as modified by this first supplemental order.

Dated at San Francisco, California, this 29th day of November, 1915.

DECISION NO. 2942.

E. B. SMITH ET AL.

vs.

MT. TAMALPAIS AND MUIR WOODS RAILWAY.

Case No. 882.

Decided November 30, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The complainants in the above entitled action having reached a satisfactory compromise with the defendant as set forth in the opinion and order in Application No. 1898, decided this day, and having requested a dismissal of this case,

It is hereby ordered that this case be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 30th day of November, 1915.

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Decision No. 2943.

IN THE MATTER OF THE APPLICATION OF FRESNO INTERURBAN RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A GRADE CROSSING ACROSS THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ON MERCED STREET, IN THE CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA.

Application No. 1835.

Decided November 30, 1915.

Applicant applies for permission to construct a single track electric railway over the single track steam railroad of the Santa Fe Railway Company in the city of Fresno. Preliminary permission for such construction was granted, but a subsequent examination showing that some protection was necessary, the matter was again brought up, and a plan submitted providing for the installation of a derail system, which plan is approved and application granted, applicant to stand expense of such installation.

Lee Landis, for Applicant.

J. W. Walker, for The Atchison, Topeka and Santa Fe Railway Company.

Report of the Commission.

Gordon, *Commissioner.*

This application was filed with the Commission on August 13, 1915. The applicant herein asks permission to construct its single-track electric railroad over the single-track steam railroad of The Atchison, Topeka and Santa Fe Railway Company at the intersection of Merced and "Q" streets, in the city of Fresno. The application was accompanied by copy of an agreement applicant has made with the Santa Fe covering the installation, maintenance and operation of the crossing and upon the representation of applicant that immediate action in the matter was desired, the Commission informally granted permission for the crossing to be installed.

An inspection by the engineering department made shortly afterward showed that some protection was probably needed, other than that specified in the contract between the companies requiring applicant to stop its cars and flag them across the track intersection. Both companies appeared willing to have the crossing protected but seemed unable to agree as to what that protection should be and it was reported that the city of Fresno objected to placing derails in the street in connection with the proposed protection.

A formal hearing was held in this matter in Fresno and due notice was sent to the city officials of Fresno but the city was not represented at the hearing. The representative of applicant, however, stated that

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the city officials would make no objection to having derails placed in the street if the Commission should so order.

The protection suggested by the Santa Fe is to place derails on the track of the applicant connected with a signal on the Santa Fe track to the north of the crossing, with an electric circuit some distance in advance of the signal. With this device installed it will be necessary, before the interurban cars of the applicant can cross the track, for the derails to be thrown, and this can not be done if there is a train on the Santa Fe track between the signal and the crossing or within the limits of the electric circuit north of the signal. When the derails are closed the signal on the Santa Fe is at danger. To the south of the crossing the track of the Santa Fe can be seen to and beyond the station, at which all trains stop, and no protection is considered necessary in that direction.

The device suggested by the Santa Fe meets the approval of our engineering department and the applicant offered no objection to installing it. The expense will amount to about $900.00, and under section 8 of the agreement between the companies, previously mentioned, it will be borne by the applicant.

I recommend the following form of order:

ORDER.

Fresno Interurban Railroad Company, a corporation, having applied to the Commission for permission to construct its track at grade across the main line track of The Atchison, Topeka and Santa Fe Railway Company, in the city of Fresno, Fresno County, California, and a public hearing having been held and it appearing to the Commission that this application should be granted subject to the conditions hereinafter specified,

It is hereby ordered that permission be hereby granted Fresno Interurban Railway Company to construct its track at grade across the main line track of The Atchison, Topeka and Santa Fe Railway Company on Merced street, in the city of Fresno, Fresno County, California, as shown by the map attached to the application, subject to the following conditions and not otherwise, viz:

(1) Applicant shall provide suitable crossing frogs for the construction of said crossing and shall thereafter maintain same in good and first-class condition for the safe operation of cars thereover. The cost of installing and maintaining the crossing shall be divided according to the terms of the contract between applicant and The Atchison, Topeka and Santa Fe Railway Company hereinbefore mentioned.

(2) Applicant shall, at its own expense, within four months from the date of this order, for the protection of this crossing, install a protective

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device as outlined in the foregoing opinion. Plans of this device shall be submitted to the Commission and approval secured for same before its installation.

(3) The cost of this interlocking device shall be borne by applicant in accordance with the contract hereinbefore mentioned and its maintenance thereafter shall be borne by the two companies in accordance with the terms of the same contract.

(4) After the installation of the crossing frogs, before placing in operation the protective device hereinbefore specified, all engines, cars, motors and trains of applicant shall, before passing over this crossing come to a full stop within fifty (50) feet thereof and shall not proceed over the same until the conductor or other employee of applicant has gone upon the crossing and ascertained that it is safe to do so.

(5) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of November, 1915.

DECISION No. 2944.

IN THE MATTER OF THE APPLICATION OF MT. TAMALPAIS AND MUIR WOODS RAILWAY FOR AN ORDER AUTHORIZING IT TO ABANDON THE OPERATION OF ITS MAIN LINE FROM DECEMBER FIRST TO MARCH FIRST.

Application No. 1898.

Decided November 30, 1915.

Applicant, operating a scenic railway from Mill Valley to Muir Woods and Mt. Tamalpais, contends that winter travel does not justify the operation of its line and accordingly applies for permission to discontinue service during the months of December, January and February. Residents of Mill Valley object to the discontinuance of this service, but a compromise having been reached whereby applicant agrees to operate a motor bus to handle local traffic between the Northwestern Pacific Railroad station and Lee street in the city of Mill

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Valley and to make one trip a day up Mt. Tamalpais and to run its steam train should the motor be unable to handle the number of passengers, application to discontinue for the months named granted.

William Thomas, for Applicant.

A. L. Whittle, for Protestants.

H. C. Cymonds, for Town of Mill Valley.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application on behalf of Mt. Tamalpais and Muir Woods Railway for permission to abandon all service on its main line during the months of December, January and February, it being alleged that the operation of the railway is conducted at a serious loss during the aforesaid months; that the road is a scenic railway patronized almost exclusively by visitors and tourists and that during the winter months but few visitors or tourists desire transportation; and that there are no regular patrons of the line who depend upon it for regular transportation. A number of protests were filed objecting to the abandonment of service, and a public hearing was held at Mill Valley on November 12, 1915.

At the hearing of this case it was agreed by counsel representing the applicant and the protestants that a compromise could be arranged satisfactory to all interests, and as a result of such agreement there has been filed with this Commission a stipulation outlining the result of the compromise and signed by the attorney for the railroad, the attorney for the citizens' committee, protestant, and the attorney for the town of Mill Valley, protestant.

The conditions of the agreement embodied in the stipulation are as follows:

1. The railway company is to immediately cause to be constructed a 60-horsepower closed automobile, equipped for operation on its rails, with every possible convenience and safety device, and with a seating capacity of twenty-three persons. Turntables are to be constructed at Mill Valley and Lee street to facilitate the operation of this automobile car. This car is to be operated on the local service of the applicant between Mill Valley (Northwestern Pacific Railroad station) and Lee street. Whenever the number of passengers exceeds the seating capacity of the automobile car, a trailer equipped with solid roof and side curtains will be attached to the motor and will be operated on the local service between Mill Valley and Lee street.

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2. Operation of the local service between Mill Valley and Lee street will be in accordance with the following schedule which affords connection with the electric trains of the Northwestern Pacific Railroad Company at Mill Valley.

Daily (Except Sundays and Holidays).

	Leave Mill Valley	Leave Lee Street
From shop	6.55 a.m.	7.04 a.m.
From N. W. P. station	7.14 a.m.	7.34 a.m.
	7.44 a.m.	8.04 a.m.
	8.14 a.m.	8.34 a.m.
	8.44 a.m.	9.04 a.m.
	9.14 a.m.	9.34 a.m.
	9.44 a.m.	10.34 a.m.
	10.44 a.m.	11.34 a.m.
	11.44 a.m.	
	3.38 p.m.	3.24 p.m.
	4.08 p.m.	3.54 p.m.
	4.38 p.m.	4.24 p.m.
	5.10 p.m.	4.54 p.m.
	5.38 p.m.	5.24 p.m.
	6.08 p.m.	5.54 p.m.
	6.38 p.m.	6.24 p.m.
	7.08 p.m.	6.54 p.m.
	7.38 p.m.	7.24 p.m.
		*7.45 p.m.

*To shop.

The railway company will operate the motor car once daily (including Sundays and holidays) over its main line from Mill Valley to the summit of Mt. Tamalpais, and will also provide such hotel service at Tamalpais Tavern as may be justified by the amount of travel during the months of December, January and February of each year, and will substitute its regular steam train whenever the volume of travel exceeds the capacity of the motor car. Local service in both directions between Mill Valley and Lee street will be performed by the main line train operating between Mill Valley and the summit of Tamalpais and such service will be given both by the motor car and the regular steam trains.

3. All local service between Mill Valley and Lee street will be furnished for a uniform fare of five cents, in either direction, children under the age of twelve at one-half the regular fare of five cents.

4. During the period covered by the months of March to November, inclusive, of each year, regular steam train service will be resumed by the railway company between Mill Valley and the summit of Mt. Tamalpais, substituting the use of the motor car on week days between the hours of 11.44 a.m. and 3.24 p.m. whenever the number of passengers desiring transportation from Mill Valley to the summit of Tamalpais does not exceed twenty-three. All through trains are to stop to take on and discharge local passengers, unless local service is being furnished by the motor car, or by local steam trains.

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5. The schedule herein provided for the through trains from Mill Valley to the summit of Tamalpais and return shall become effective as of December 1, 1915, and shall continue to and including February 29, 1916. The schedule herein provided for the local trains between Mill Valley and Lee street shall become effective as of December 24, 1915, provided that if the motor car be not completed and ready for service on such date that the railway company may continue to operate its local service by steam train until such time as the motor car will be completed and ready for service.

In view of the fact that an agreement has been arrived at between the applicant and the protestants as indicated by the above stipulation and that the provisions of such agreement will furnish a reasonably adequate service during the months of December, January and February of each year, I am of the opinion that the application should be denied and that the Commission should order the service installed as agreed upon between the attorneys for the applicant and the protestants and that same be operated during the months of December, January and February of each year or until the further order of this Commission.

I suggest the following form of order:

ORDER.

Mt. Tamalpais and Muir Woods Railway having made application to this Commission for permission to abandon all service on its main line between Mill Valley and the summit of Mt. Tamalpais during the months of December, January and February of each year, a public hearing having been held and an agreement having been reached by the applicant and the protestants, and the Commission being fully advised in the premises,

It is hereby ordered that the application for suspension of service during the months of December, January and February of each year be and the same is hereby denied.

It is further ordered that the operation of the main line of the Mt. Tamalpais and Muir Woods Railway between Mill Valley and the summit of Mt. Tamalpais and of the so-called local line between Mill Valley and Lee street shall be conducted in accordance with the stipulation agreed upon by the applicant and the legal representatives of the protestants as outlined in the foregoing opinion.

The Commission reserves the right to make such further order with respect to the train schedules to be operated by the Mt. Tamalpais and Muir Woods Railway as to it may seem right and proper or in the interest of public convenience and necessity.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of November, 1915.

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Decision No. 2945, grade crossing; not printed. See end of volume.

DECISION No. 2946.

IN THE MATTER OF THE COMMISSION'S INVESTIGATION ON ITS OWN MOTION OF THE RATES, RULES, REGULATIONS AND SERVICE OF THE MURPHY WATER, ICE AND LIGHT COMPANY.

Case No. 817.

Decided November 30, 1915.

The Commission being in receipt of a number of informal complaints from consumers of the Murphy Water, Ice and Light Company, bringing into question the rates and particularly the service rendered by that company and being unable to adjust any of such complaints informally, the above investigation was initiated and a thorough investigation made into the rates and services of respondent company.

It appears that respondent, operating a water and ice business in the city of Needles, entered into a contract with the Santa Fe Railway Company for the furnishing of water and ice to that company. That through a subsequent arrangement the revenues from this source were diverted to the ice company, the water company receiving in return certain minor considerations, such as services of a pump man, a percentage of fuel oil, etc.; the amount of money so diverted amounting to $46,692.96 for the period April, 1912, to August, 1915.

Respondent claims that its revenues from the water business are insufficient to permit it to install the necessary extensions and service connections petitioned for by its patrons and prospective patrons. An investigation of its revenues and operating expenses, however, show that it is receiving a very liberal return on its invested capital, also that its present schedule of rates is more or less discriminatory in that certain classes of its consumers are charged a minimum rate considerably larger than others. In this connection the Commission holds that irrespective of the particular class of consumers, should the service be identical and no more costly to install than other services, the minimum rate should be the same.

Held. That the present rates of respondent are unjust and discriminatory, that certain betterments and improvements are necessary to the rendition of adequate and efficient service and respondent is accordingly directed to proceed with the installation and connection of mains along a number of streets named, part of such installation to be contingent upon the demand therefor by prospective consumers. The following schedule of rates established to become effective within thirty days: first 2,000 cubic feet, 12½ cents per 100 cubic feet; next 48,000 cubic feet, 10 cents per 100 cubic feet; over 50,000 cubic feet, 5.0625 cents per 100, with a minimum monthly rate of $1.25 for a ¾-inch meter and service, the minimum to increase in proportion to the size of connection.

S. M. Haskins, of *Gibson, Dunn & Crutcher*, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The Murphy Water, Ice and Light Company is a public utility engaged in the furnishing of water in wholesale quantities to The Atchison, Topeka and Santa Fe Railway Company, and for domestic

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and commercial use to the inhabitants of the town of Needles, California. The property consists of a pumping plant, about six miles of transmission and distribution mains, and the necessary meters, connections, and miscellaneous equipment. At the present time there are about 580 consumers. The system is entirely metered and the serving area is small and compact. The pumping plant is located on the banks of the Colorado River, about one-third of a mile from the center of town. Water is obtained through two duplex pumps operated by steam power, from 14 shallow wells each 56 feet deep, the average pumping lift being about 17 feet. No definite measurements have ever been made of the maximum sustained capacity of the plant. The pumps have a rated capacity of 1,000,000 gallons daily, each. It is claimed by the company, however, that the operation of one pump taxes the supply of the wells. The records of the company concerning water use, show that a little over 311,000,000 gallons of water were delivered during 1914, of which The Atchison, Topeka and Santa Fe Railway Company received 77.51 per cent, the Needles Ice Company 4.97 per cent, and the residents of the town the remaining 17.42 per cent. The railway company is so situated, in relation to the pumping plant, that it is the first consumer to receive service through the transmission and distribution mains.

This investigation is the result of numerous and constant informal complaints on the part of the patrons of this utility, as to certain of its rates, rules and regulations, and in particular, the quality of service rendered by it.

In all twenty-seven informal complaints from various consumers receiving service from this company's plant, have been filed with this Commission. This statement, however, conveys but little idea of the time, labor and expense involved in these complaints through correspondence and informal field investigations.

In this regard, I wish to call particular attention to the failure to settle these complaints informally, for I am convinced the Commission has made unusual efforts in the case of this particular utility, to adjust matters quickly and equitably, and that, had the utility been so inclined, many of these complaints could and should have been speedily settled, and the necessity of formal investigation obviated.

In order that the situation may be entirely clear, and before proceeding to the matters directly involved in this case, I will set forth briefly the financial history of this company as reported by the Commission's auditing department, after a thorough examination of such records of the utility's operations as now exist.

The Murphy Water, Ice and Light Company was incorporated February 23, 1904, with an authorized capital of $250,000.00, divided into

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2,500 shares of a par value of $100.00 each. The property of this company, consisting of a pumping plant, water mains, meters, and other property used in connection with same as a water system, also an ice plant, including real estate, machinery equipment, and personal property used in connection therewith, was built and owned by Mr. Dan Murphy. This property was conveyed to the Murphy Water, Ice and Light Company by Mr. Murphy, in accordance with a proposition submitted by him under date of March 9, 1904, for and in consideration of an issue to him of 2,495 shares of the capital stock of that company. In consideration of the transfer of physical property, Mr. Dan Murphy also agreed to assign all his rights and interests in two valuable contracts with The Atchison, Topeka and Santa Fe Railway Company, for supplying that company with water and ice.

In January, 1912, the Needles Ice Company was incorporated with an authorized capital of $125,000.00, divided into 1,250 shares of the par value of $100.00 each, all of which stock was issued in consideration of the transfer of all physical property held by the Murphy Water, Ice and Light Company applicable to the ice business. The stock issued in connection with the transfer of this particular property pertaining to the ice business, was not issued to the Murphy Water, Ice and Light Company, but instead to the stockholders of record of that company. The physical property transferred in this respect was appraised at $132,921.38.

The contracts of The Atchison, Topeka and Santa Fe Railway Company, heretofore referred to, and assigned by Mr. Dan Murphy to the Murphy Water, Ice and Light Company, are still in effect. The contract for water has been renewed twice since the original assignment by Mr. Dan Murphy in 1904. The first renewal was of March 1, 1909, and the second renewal on May 26, 1914. However, regardless of the assignment of this particular contract by Mr. Dan Murphy, the renewal in 1909 was not with the Murphy Water, Ice and Light Company, but with Dan Murphy. By reference to The Atchison, Topeka and Santa Fe Railway Company vouchers in payment for the services rendered under this contract, it was found that all vouchers were made payable to Dan Murphy up to and including the service furnished for June, 1914, indicating that The Atchison, Topeka and Santa Fe Railway Company had not been advised, nor were they a party to original assignments in 1904, nor the renewal of 1909. The contract of May 26, 1914, was, however, with the Needles Ice Company. Up to and including March, 1912, the revenue received from The Atchison, Topeka and Santa Fe Railway Company, for water furnished under the contract, was accounted for and paid to the Murphy Water, Ice and Light Company. Subsequent to April, 1912, this revenue was diverted and paid

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to the Needles Ice Company in accordance with an agreement or understanding between the water company and the ice company, in consideration of which the ice company paid the service of one pump man, three-fifths of the fuel oil used, and certain small items of miscellaneous labor. The net revenue diverted from the water company to the ice company, in accordance with this agreement, for the period April, 1912, to August, 1915, inclusive, amounts to $46,692.96.

In view of the fact that the Needles Ice Company has no investment whatsoever in the Murphy Water, Ice and Light Company (though it is true certain of the stockholders in one company are also stockholders in the other company), nor does it own any portion of the pumping plant, transmission and distribution mains, nor is it actually and physically engaged in using these facilities in the production and delivery of water sold to The Atchison, Topeka and Santa Fe Railway Company, I am totally unable to properly account for any reasoning which would justify this diversion of revenues, particularly when the earnings of the water company are claimed to have been so impaired, as a result, that the consumers have had to suffer from inadequate service. The Murphy Water, Ice and Light Company contends to the effect that owing to the low rates for service, it is not earning sufficient revenue (exclusive of that diverted from The Atchison, Topeka and Santa Fe Railway Company to the Needles Ice Company) to make necessary improvements in order to better this service. If we separate entirely from the remainder of the system all operations relating to the delivery of water to the railway company, this contention may have some merit, but I have no patience with this argument, for it assumes the arbitrary elimination, with no logical explanation therefor, of this company's largest and most profitable customer, and one who provides approximately 60 per cent of its total revenue. Even if The Atchison, Topeka and Santa Fe Railway Company is to be eliminated as one of the consumers of the Murphy plant, as was indicated at the hearings held on this matter in Needles on the 21st and 22d days of September, 1915, we are confronted by an entirely different situation than has existed in the past, or any time during the period in which complaints have been made, and one which, in my opinion, has no connection with, and utterly fails to satisfactorily explain such conditions as did, and still do obtain under this water system. At this hearing the secretary of this company, Mr. T. J. Murphy, stated plans were under way by which the railway company would definitely cease to become a customer of their plant. The Needles Ice Company uses from 500,000 to 700,000 gallons per day in the cooling and condensing of its ammonia coils. At the present time the water used for this purpose is produced locally at the ice plant, and is unfit for any other

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purpose. The plan proposed by Mr. T. J. Murphy is the production of a supply of water for this purpose, independent of the supply now produced by the ice company, of such a quality that after it has passed over these coils, it may again be used, upon proper treatment, by The Atchison, Topeka and Santa Fe Railway Company. In regard to this proposed supply Mr. A. W. Silver, chief clerk to the superintendent of The Atchison, Topeka and Santa Fe Railway Company, at Needles, testified that even after treatment it would be totally unfit for the domestic uses of his company, such uses constituting approximately 20 per cent of the total amount now used. He further testified that up until a short time before the hearings on September 21 and 22, 1915, no satisfactory supply had been discovered, though very recently tests of certain waters had produced very satisfactory results.

While there is no doubt but what the elimination from the Murphy plant of The Atchison, Topeka and Santa Fe Railway's water use, consuming as it does the greater portion of the plant's production, would relieve the strain on this admittedly greatly overtaxed system, and, as a consequence, better service would result to the remaining consumers, no definite evidence, beyond such general statements similar to those just set forth, has been submitted by the water company indicating such a change was to take place in the immediate future. Neither have any results, beyond a few preliminary operations relating to the drilling of wells, been completed, nor is there anything in the evidence to either convince or indicate to me that when such wells have actually been drilled the supply obtained will be, either in quantity or in quality, such that the plan proposed will produce the results anticipated. I do not wish to be understood as taking the stand that this plan will not be put into effect if it is physically possible to do so, for, quite to the contrary, I have been considerably impressed by the very possibilities of these plans, but nevertheless I am of the opinion that certain improvements, which will not in any way conflict with this proposed change, can be and should be immediately installed. If, however, the plans relative to the water used by The Atchison, Topeka and Santa Fe Railway Company are eventually and successfully carried out, we will then have something tangible upon which to base our conclusions, and can deal with the situation clearly. At any rate, I do not feel it incumbent upon me to further consider a condition which at the present time is so much a matter of conjecture.

If, as I have indicated in the discussion heretofore given, the operations of this plant are to be considered as a whole, investigation shows that a liberal rate of return is being earned upon the investment involved.

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Appraisals of this property have been made by both the Commission's engineers and those representing the company, and a detailed examination of the utility's books have been made by the Commission's auditing department. The following tabulation shows the results of these appraisals and investigations:

	Estimated cost	Annual depreciation allowance	Total accrued depreciation	Estimated cost less accrued depreciation
Water company's engineers as of December 31, 1914	$91,302	$3,087	$24,523	$66,779
Water company's engineers as of December 31, 1915*	91,302	3,087	27,610	63,692
Commission's engineers as of September 1, 1915	76,415	1,593	----------	----------
Water company's books as of December 31, 1914	82,431	2,761	----------	76,909
Water company's books as of December 31, 1915*	82,431	2,761	----------	74,148

*Computed on the basis of the prior year. The amount shown should be corrected by such amounts as have been installed during the year 1915.

The company's engineers have computed depreciation allowance by the straight line method, while Mr. James Armstrong, one of this Commission's engineers, has estimated an annuity upon a 6 per cent sinking fund basis. For the purpose of this investigation it is not necessary to enter upon a discussion of the merits of these two methods of computing depreciation, but I do desire to call particular attention to the result which will be obtained if the theory of depreciation advanced by the company's engineers is applied to the cost new, estimated by Mr. Armstrong for the Commission. Prior to the hearing, the Commission's representatives were unable to obtain any correct data as to the ages of the various elements entering into the system, and as a consequence did not compute any accrued depreciation. If the probable useful lives and ages shown by the company's engineers are applied to the Armstrong estimate of cost, and accrued appreciation is measured by the straight line method, I conclude that the total estimated cost, less accrued depreciation, would be $55,890.00 on December 31, 1914, and $53,306.00 on December 31, 1915, subject of course to such additions to, and subtractions from investment, as have been made during the year 1915. However, it will be apparent, upon investigation of the tabulations immediately following, that any further analysis of these matters is unnecessary.

The Commission's auditing department, under Commission's Exhibit No. 2, reports operating expenses and revenues of this plant, considering the operations of the Murphy Water, Ice and Light Company, and of

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the Needles Ice Company in connection therewith, as a whole, as follows:

	1914	First eight months of 1915
Gross operating revenue	$31,834 59	$22,365 54
Total operation expenses, including depreciation	23,788 49	13,130 93
Net operating revenue	$8,046 10	$9,234 61

The total net revenue shown by the table above, for the period of twenty months ending September 1, 1915, is sufficient to provide a return of 6 per cent on an investment of $172,807.00, or 10 per cent on $103,684.00. In the statements of operating expenses, not only is there included the sum of nearly $2,000.00 incurred annually in connection with these complaints (and which should properly be distributed over a term of years), and an allowance for depreciation exceeding by $1,168.00, annually, that estimated by the Commission's engineer, but also charges for repairs to mains and equipment, which seem unusually heavy for a plant of this size and in excess of what would be incurred normally, and on an average. It is my opinion that if a careful investigation and segregation of the expenses of this company was made over a long period of operation, a much greater rate of return than has been indicated, would be shown to have been received.

Bearing in mind all the matters which have heretofore been set forth, I am firmly convinced that this utility can well afford to, and should make such betterments and extensions as are necessary, at this time, for proper service to these consumers. I also find that certain of its rates are inequitable, and not consistent with certain other of its rates, and that certain of its practices are not in conformity with the rules and regulations applicable to water utilities approved by this Commission in the past, and more recently set forth in Decision No. 2879, in Case 683, of this Commission, effective December 1, 1915.

The present effective rates of the Murphy Water, Ice and Light Company were established by the board of supervisors of San Bernardino County in May, 1911, and are as follows:

Fifteen cents for each 1,000 gallons delivered, with the following schedule of minimum charges:	
For each and every store, shop, mercantile establishment, or place of amusement, or residence	$1.50 per month
Provided, where two or more families occupy the same residence, the water company shall have the right to make the minimum charge of $1.50 per month for each family.	
For saloons	6.00 per month
For restaurants	6.00 per month
For laundries	10.00 per month
For lodging houses of 10 rooms or more	5.00 per month
For offices containing only 1 wash basin	1.00 per month
For offices with street hydrant, or more than 1 wash basin	1.50 per month

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While I do not propose to go fully into the matter of rates, at this time, I do desire to indicate certain of the inconsistencies resulting from the application of these rates.

Such records of water use as have been made available, show that during the winter months of the year, such as December, January and February, nearly 75 per cent of the total number of consumers do not individually use in excess of 500 cubic feet per month, while about 80 per cent of them use less than 700 cubic feet, and over 90 per cent use less than 1,000 cubic feet, although such consumers are entitled to 1,333 cubic feet per month under the present rates, upon the payment of the minimum of $1.50. A somewhat different situation exists, however, during the hot weather season, something over one-half of the consumers using in excess of 1,000 cubic feet per month; for instance, records for the month of June, 1914, show that only 25 per cent used less than 500 cubic feet per month, 33 per cent less than 700 cubic feet per month, and 45 per cent less than 1,000 cubic feet per month. A slight study of these records of use would seem to indicate that probably half, on an average, of these consumers do not use the quantity, or anywhere near the quantity, to which they are entitled under the minimum rate, and that they will be advantageously affected by any reduction in the minimum rate, and the quantity of water allowed therefor. This situation is manifestly inequitable to these consumers, and should be remedied, provided it does not work any injustice to the utility in question.

I also desire to call particular attention to the minimum rates, heretofore shown, for laundries, saloons, restaurants, and similar classes of service. I can see no logical reason for the segregation of such classes of services from the consumers as a whole, provided that the physical equipment for these classes of consumers, referring in particular to the meter and service connections, is in uniformity with that provided, and necessary for the remaining consumers. If these classes of service make considerable use of water, the utility will receive a return commensurate with the amount used, and if they are not large consumers, it is manifestly unjust, beyond the minimum charge necessary to support their particular service, that they pay for what they do not use. However, if it is necessary to install larger meter and service connections for these particular users, I am of the opinion that the minimum charge should be correspondingly advanced.

The rates which I shall recommend are for the purpose of meeting conditions as they now exist, and in my opinion are just and reasonable, in view of the present situation, and if, due to any change in this company's methods of operations, they, under different conditions, become unjust and unreasonable, the possibility of which I have already

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indicated, matters can then be brought to the attention of this Commission for readjustment.

I shall recommend the following form of order:

ORDER.

The Railroad Commission of the State of California having, on its own initiative, called into question the rates, rules, regulations and service of the Murphy Water, Ice and Light Company; an investigation of such matters having been made, and the hearing having been duly held, and the Commission being duly apprised in the premises, it is hereby found as a fact; that the rates herein established are just and reasonable rates to be charged by the Murphy Water, Ice and Light Company, and that the existing rates of said company are unjust and unreasonable, in so far as they differ from the rates so established.

And the Commission further finds as a fact, that certain improvements and betterments are immediately necessary to the rendering of good service to the consumers of the Murphy Water, Ice and Light Company, and that the revenues which said company should properly receive through its operations, including therein such revenues heretofore referred to, and derived from the sale of water to The Atchison, Topeka and Santa Fe Railway Company, are sufficient to reasonably warrant immediate installation of such improvements and betterments, at the expense of said company.

Basing its order on the foregoing findings of fact, and the further finding of fact contained in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California,

First—That the Murphy Water, Ice and Light Company establish and file with the Railroad Commission, within thirty days from the date of the order herein, the following monthly rates for water:

Within the first 2,000 cubic feet at 12½ cents per 100 cubic feet.
Within the next 48,000 cubic feet at 10 cents per 100 cubic feet.
For use in excess of 50,000 cubic feet at 5.0625 cents per 100 cubic feet, for all water used.
Minimum monthly payments regardless of character of use, shall be as follows:

For ¾-inch meter and service, or smaller	$1 25
For 1-inch meter and service	2 50
For 1½-inch meter and service	3 50
For 2-inch meter and service	4 50
For 2½-inch meter and service	5 50
For 3-inch meter and service	6 50

For meters and service connections larger than shown herein, minimum monthly rates in proportion.

Second—That the Murphy Water, Ice and Light Company shall immediately proceed to lay and construct, and upon completion there-

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after operate and maintain as a portion of its water plant, the following described water pipes:

Beginning at a point where the line of Walnut street produced easterly intersects said company's present 8-inch transmission main, leading from its pumping plant, a 6-inch main westerly along the line of said Walnut street to its intersection with K street; a 4-inch main southerly along said K street from Chestnut street to Second street, thence easterly a 4-inch main along Second street from K street to I street; a 4-inch main easterly along Front street from said 4-inch main on K street hereinbefore mentioned, to a connection with the present 4-inch main on Front street, now ending approximately at the intersection of Front and J streets; a 4-inch main along Walnut street from K to M streets; a 4-inch main along Spruce street from K street to M street; a 2-inch main westerly along Fourth street from E street to the intersection of said Fourth street with F street extended southerly, thence on F street so extended, southerly from Fourth street 250 feet; and contingent upon demand therefor from bona fide propective consumers of water, a 2-inch main on Market street from K street to L street, and a 2-inch main on Arch street from K street to L street.

Third—That the Murphy Water, Ice and Light Company properly connect with the remainder of its water system, and with each other, all the above mentioned water pipe extensions, and that the services of the present consumers of said water company's system, and of such consumers as make proper application therefor, in the territory served by the extensions hereinbefore provided, be connected, at the expense of the said company, with such of the water pipes hereinbefore ordered, as are most convenient for the delivery of water.

Fourth—That the Murphy Water, Ice and Light Company place in full operation, as a portion of its water system, said extensions and betterments hereinbefore ordered, within sixty days from the effective date of this order, and shall make two written reports to this Commission of progress in connection with the construction of said extensions hereinbefore ordered, the first report to be rendered at the end of thirty days from the effective date of this order, and the second report upon full completion and operation of said extensions and betterments.

Fifth—That said Murphy Water, Ice and Light Company shall prepare a schedule of rules and regulations, relating to the conduct of its business, in conformity with this Commission's Decision No. 2879 in Case 683, entitled, "In the matter of the practice of water, gas, electric and telephone utilities requiring deposits before rendering service," and file for approval, said schedule, with the Railroad Com-

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mission of the State of California, within thirty days from the effective date of this order.

Sixth—This order shall become effective on December 23, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of November, 1915.

DECISION No. 2947.

THOMAS MONAHAN, AS MAYOR OF THE CITY OF SAN JOSE,

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 477.

IN THE MATTER OF THE RATES, SERVICE AND EXTENSIONS OF PACIFIC GAS AND ELECTRIC COMPANY IN ITS SAN JOSE DISTRICT, ON THE COMMISSION'S OWN INITIATIVE.

Case No. 550.

Decided November 30, 1915.

On complaint of the city of San Jose and in connection with proceedings initiated upon its own motion the Commission heretofore established a schedule of rates and rules for electric service in the city of San Jose and adjacent territory. Respondent subsequently applied for a rehearing and the effective date of the original order was suspended pending a review of the additional evidence offered in support of such petition.

Held, The following schedule of rates established for the city of San Jose and adjacent territory, including the towns of Los Gatos, Mountain View, Sunnyvale, Santa Clara, and Alviso and unincorporated territory, to become effective December 20, 1915: For domestic and commercial lighting, 7 cents per kilowatt hour for first 20 kilowatt hours; 4 cents per kilowatt hour for next 330 kilowatt hours; 3 cents per kilowatt hour for amounts over 350 kilowatt hours; minimum per meter per month, $1.00. Schedule also established for various forms of street lighting and certain changes made in rules governing agricultural and power service. Respondent also directed to make all extensions and connections within the cities of San Jose, Los Gatos, and Mountain View at its own expense, within thirty days from receipt of a written request for service, and also construct extensions, at its own expense, to six certain individuals named who have filed informal complaints with the Commission alleging the refusal of respondent to extend service.

Held, That a fair allowance for overhead percentages on estimated reproduction cost of hydroelectric, steam and transmission construction is as follows: 1 year's construction period, 20 per cent; 2 year's, 23½ per cent; 3 year's, 27 per cent; that an allowance of two months' operating expenses for working capital is a just and reasonable amount.

Held, As regards the apportionment of investment in individual steam plants: That though on the face it would appear that such investment is more or less

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assignable to the immediate locality in which the plant is located, it is more proper to consider such plants as feeding the system as a whole, particularly as in times of low production at the hydroelectric production centers, the steam plants are called upon to develop considerable energy for consumption throughout the system as a whole.

Held, Depreciation: That an amount of $277,110.00 should be allowed under this head on applicant's production and transmission system with the understanding that the full amount allowed shall be set aside for that purpose.

Held, That the apportionment of cost of producing and transmitting energy as between demand charge and energy charge should remain, with slight modification, the same as established in the Antioch case; that the return for service should be segregated between demand and energy, as follows: demand, interest, depreciation, maintenance, fire insurance, taxes (part); energy, operating expenses, casualty insurance, general expenses (prorated), taxes (part).

Earl Lamb, city attorney, for City of San Jose.

C. P. Cutten, for Pacific Gas and Electric Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

OPINION ON PETITION FOR REHEARING.

On August 28, 1914, this Commission rendered its Decision No. 1758 in the above entitled proceedings (Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 298). On September 17, 1914, Pacific Gas and Electric Company filed its petition for rehearing herein. The matters urged in the petition seeming to require further consideration, the Commission suspended the effective date of the order of August 28, 1914, during the pendency of the petition for rehearing. Hearings were thereafter held at which evidence and argument was presented on the question whether a rehearing should be granted. As is usual in such cases, the parties stipulated that if the Commission should be of the opinion that a rehearing should be held, the evidence and argument thus taken should be considered to be the evidence and argument on rehearing, so that the matter may be finally disposed of on one set of hearings.

A mass of additional evidence has now been presented to the Commission and a complete re-examination has been made both of the general costs of production and transmission and of the situation in the San Jose district. Such of the objections of the defendant as seem to require consideration will be referred to in the course of this opinion. The subject matter of the opinion will be considered under the following general heads:

1. Production and transmission system.
2. San Jose district.
3. Rates and return therefrom.
4. Extensions.
5. Rules and regulations.

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1. Production and Transmission System.

In the decision of August 28, 1914, the Commission accepted the cost of producing and transmitting electric energy on the defendant's system, as determined in Case No. 400, *Town of Antioch* vs. *Pacific Gas and Electric Company* (Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 19). Attention will now be directed to certain respects in which, as the result of the additional evidence now presented, modifications must be made in the calculations presented in the *Town of Antioch* decision.

The South Yuba Reservoir system is used jointly by the defendant's water and electric departments. In view of the fact that other property which is jointly used is charged to the water system, it seems reasonable to charge the South Yuba Reservoir system to the electric department. Eliminating certain nonoperative property, and revising the overhead percentages used by J. G. White & Company, as hereinafter indicated, I find that an allowance of $631,660.00 should be made for the South Yuba Reservoir system.

In the *Town of Antioch* case, the overhead percentages used by the Commission were based upon an estimate of the investment as the investment would be shown by the entries in an operating company's books. In the present proceedings, we are applying overhead percentages to estimated historical reproduction cost. Exhaustive evidence has now been presented by the defendant showing the overhead expenditures incurred in large hydroelectric developments by the leading hydroelectric utilities in this State.

I find that on the facts of the present proceeding a fair allowance to be made herein on the corrected estimated reproduction cost of the hydroelectric steam and transmission construction, as estimated by J. G. White & Company, would be as follows:

For 1 year's construction	20 per cent.
For 2 year's construction	23½ per cent.
For 3 year's construction	27 per cent.

In other cases, these percentages might be excessive, but from the evidence in this proceeding it appears that the unit costs used by J. G. White & Company did not include any item for contingencies or omissions or for portions of engineering and superintendence, which items or portions thereof are frequently included in unit prices. Hence higher overhead percentages are being used herein than would ordinarily be used.

The defendant contends that the Commission was not justified in making deductions from the cost of reproduction of the Electra properties, as reported by J. G. White & Company. An analysis of the testimony of Mr. N. R. Ellis, presented both on the original hearing and

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on the rehearing, convinces me that a considerable reduction in the J. G. White & Company estimates should be made. The deduction on the base cost made in the *Town of Antioch* case was $334,000.00. A careful review of the evidence presented on the original hearing in this proceeding, as well as the evidence presented by Mr. Ellis on the rehearing, convinces me that a deduction of $333,012.00 should be made from the J. G. White & Company base cost for the Electra properties in determining their fair cost.

The defendant contends that the Commission's allowance for working capital, in connection with the production and transmission system, is not adequate. The item "working capital" does not include such items as reserves for accrued interest, taxes, or dividends, or capital held for construction purposes. The Commission ordinarily allows for "working capital" an amount equivalent to cover two months' operating expenses. I see no reason for departing from this practice in this proceeding.

On the rehearing, the defendant offered evidence to show that the Commission erred in the *Town of Antioch* case in deducting certain lands from the hydroelectric system on the ground that these lands were nonoperative. The testimony submitted by the defendant on the rehearing shows conclusively that the lands thus deducted, being proposed reservoir sites, timber lands or excessive purchases in connection with rights of way, are nonoperative, as found by the Commission in the *Town of Antioch* case, and that they should be deducted from the operative property as was done in that case.

In the *Town of Antioch* case, the Commission accepted the testimony of the defendant with reference to the fair value of its hydroelectric lands. Cross-examination of the defendant's witness on the rehearing in the present proceeding, however, developed clearly the fact that the values testified to by him are considerably in excess of the fair value of the land to be allowed in rate-making proceedings, under the rules established by the Supreme Court of the United States in the *Minnesota Rate Case,* 230 U. S. 352, and other cases. The evidence on the rehearing clearly shows that the defendant's witness gave consideration to items such as the character and personality of the seller, which ought not to be considered, and also, that he added to the fair market value of the property an additional amount which he thought the owner would try to get in excess of the fair market value of the land. It appears, further, that in a number of cases he reported a value of the land three or four times the price actually paid for it two or three years ago. While it is evident that additions must be made for rights of way, as shown in defendant's Exhibit No. 44, which were omitted by the company in the *Town of Antioch* case, the record itself shows,

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on its face, that substantial reductions must be made from the land values claimed by the defendant.

From the testimony of Mr. F. Emerson Hoar, the Commission's gas and electrical engineer, given on the rehearing, it appears clearly that the value hitherto allowed for the Folsom plant, in accordance with J. G. White & Company's estimate of the cost to reproduce the plant, is excessive. On the basis of J. G. White & Company's estimate of the cost to reproduce the property, this cost is at least $455.00 per kilowatt of maximum demand, this being from two to four times the cost of the defendant's other plants. The evidence shows that the labor on the canal headworks and dam was largely done by convict labor, at 50 cents per day. Mr. Hoar testified that, in his opinion, if the Folsom plant did not exist today, it would certainly not be built, and I am inclined to the view that Mr. Hoar's opinion is correct. To allow the full cost of the estimated reproduction of this plant at present day wages as estimated by J. G. White & Company, in establishing rates, would, in my opinion, be unfair and unreasonable.

Railroad Commission's Exhibit No. 3, on rehearing, shows that a large portion of the land of the Oakland steam plant is used for local purposes and not for general steam production and transmission purposes. The amount allowed in the original decision herein under the head of production and transmission should be reduced from $209,259.00 to $95,390.00.

Similarly, three-fifths of the landed capital and power plant buildings and general structures of the San Jose steam plant should be charged locally instead of being included in the property devoted to production and transmission.

The following property is herein chargeable to production and transmission:

(1) The entire hydroelectric system, including the eight operative hydroelectric plants with all lands, reservoirs, canals, and other property used in connection with the production of energy, and also all substation equipment installed in these plants and included in Account No. 102 of the defendant's classification of accounts.

(2) The steam plants located in San Francisco, Oakland, Sacramento and San Jose.

(3) The entire transmission pole and tower lines, the Cordelia substation and the transmission substation equipment in the following main switching substations: Nicolaus, Davis, South Tower, Ridge, Hurdlyn, Mission San Jose, Redwood and Mountain View.

(4) The main telephone system, with the exception of that part of the system which is located in distribution systems and substations and also the part used in connection with defendant's irrigation systems.

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(5) A part of the head office, all department general capital, electric general capital and supply department capital prorated on the capital basis.

The defendant contends that its steam plants should be charged to the cities in which they are respectively located and should not be included in the general production and transmission capital, on the basis that they are primarily for the insurance of continuity of service in their respective cities.

The evidence shows that the major portion of the output of the San Francisco and Oakland steam plants is used locally, only a small portion being delivered to the transmission system, and that the Sacramento and San Jose steam plants deliver no energy to the transmission lines. None of these plants, however, unless possibly the San Francisco plant, are operated for the greatest local economy of cost. The plants are operated primarily for the system efficiency During 1913, when the water supply was low, the output of the Sacramento, Oakland and San Jose steam plants to supplement hydroelectric energy was about 49,000,000 kilowatt hours, while in 1914, when the supply of water was more ample, the same plants generated less than 10,000,000 kilowatt hours, and the output of the San Francisco plant was reduced approximately 23,000,000 kilowatt hours.

While the steam plants have a certain local desirability because of their guarantee to an extent of continuity of local service, they are not operated for local economy, as already stated, but rather for system economy. It appears only reasonable to consider all the production plants as feeding into one pool from which the energy is then taken, the steam plants relieving the hydroelectric plants during the low water seasons.

This Commission's gas and electrical department is strongly of the opinion that these steam plants should be charged to the general production and transmission system. The department takes the position that it is immaterial whether these steam plants feed energy directly to the transmission lines or whether they merely serve to relieve the transmission lines so as to permit the hydroelectric energy to be distributed elsewhere. The steam plants are all connected up to the general transmission system. While the matter is not entirely free from doubt, I am content to adopt the view of the gas and electrical department. As this Commission now has jurisdiction over the rates charged by defendant in its entire territory, the defendant will not be injured as long as this same disposition of the matter is followed in the establishment of all the company's rates over different portions of its system.

The company contends that the allowance for depreciation in the *Town of Antioch* case is not sufficient. After a careful re-examination

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of this subject, bearing in mind the relationship between maintenance and depreciation and the charges actually made for depreciation by the defendant and the amounts set aside by the defendant for reserves, I have reached the conclusion that the amount hitherto allowed is not sufficient and that the sum of $277,110.00 should be allowed under the head of depreciation on the defendant's production and transmission systems. This allowance represents an increase of approximately 10 per cent over that made in the *Town of Antioch* case. It will be expected, of course, that when the Commission makes an allowance for depreciation, the utility will actually set aside this amount in its depreciation fund and will credit to the fund all returns accruing to it.

Claims are made by the company for fire insurance reserve and casualty insurance reserve considerably in excess of the amounts necessary for these purposes as shown by the defendant's experience during the last few years and in excess of the amounts set up by the defendant. On the other hand, the defendant should not be prejudiced by carrying its own reserves. The subject is a difficult one, to which the Commission intends to give special consideration in the case of *City and County of San Francisco* vs. *Pacific Gas and Electric Company,* involving the defendant's gas rates in San Francisco, which case is now pending. For the purposes of the present proceeding, I am satisfied that substantial justice will be done if an allowance of $20,000.00 is made for fire insurance reserve and $17,350.00 for casualty insurance reserve, in connection with defendant's production and transmission systems.

Defendant contends that the Commission erred in the *Town of Antioch* case in apportioning the cost of producing and transmitting energy as between the demand charge and the energy charge. Defendant contends that practically all expenses other than the cost of fuel should be considered as a demand cost, and that the energy cost should include little additional to the cost of fuel. Whatever merit defendant's contention may have in theory, their adoption would result in rates which, from a practical point of view, are in many instances impossible. The demand costs would be in excess of what a number of classes of consumers could possibly pay. I am of the opinion that the method used by the Commission in the *Town of Antioch* case, with slight modifications, will produce a fairer and more reasonable segregation of the return for the service between the different classes of service. The return for service will be segregated between the items of demand and energy, as follows:

Demand.	Energy.
Interest.	Operating expense.
Depreciation.	Casualty insurance.
Maintenance.	General expense (prorated).
Fire insurance.	Taxes (part).
Taxes (part).	

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The defendant further contends that the Commission erred in its method of prorating general expense to the production and transmission systems. Defendant contends that this general expense should be prorated on the basis of number of consumers instead of on the basis of investment used by the Commission. Upon the basis contended for by defendant, none of the general expense would be chargeable to the production and transmission system, although it is evident that a part of the general expense should be charged to the operation of this part of defendant's system. On the other hand, striking inconsistencies also appear, resulting from a segregation of the general expense on the basis of investment. Thus, by the use of this method, there is charged to the hydroelectric system approximately one-fifth of the total general expense of defendant's entire system, although the direct operating expenses in connection with this part of the system amount to less than four per cent of the total expense. While I am adhering to the method heretofore employed by the Commission, I am frank to say that it may be possible hereafter to devise some method of apportionment of general expense which will be more satisfactory both to the defendant and to the Commission. Here, again, the defendant will not suffer loss, for the reason that the Commission has jurisdiction over all its rates and will, of course, see to it that the defendant receives a reasonable return on its entire business.

The following table shows the cost of power, including profit, at the high tension terminals of the distribution substations as estimated for the year 1915, on the basis of normal conditions:

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TABLE NO. I.

Cost of Power at High Tension Terminals of Distribution Substations, 1915.

	Hydroelectric generation	Steam generation	Purchased	Total production	Transmission	Total
Capital	$14,316,153	$5,161,197		$19,477,350	$5,993,267	$25,470,617
Demand costs—						
Interest at 8 per cent	$1,145,292	$412,896		$1,558,188	$479,461	$2,037,649
Depreciation	104,362	79,960		184,322	92,788	277,110
Maintenance	87,600	76,200		163,800	55,780	219,580
Fire insurance reserve	10,900	9,100		20,000		20,000
Taxes 5¼ per cent	74,699	32,034		106,733	34,792	141,525
Total demand	$1,422,853	$610,190		$2,033,043	$662,821	$2,695,864
Energy costs—						
Operating expense	$157,700	$186,000		$343,700	$121,500	$465,200
Fuel oil		447,450		447,450		447,450
Purchased power			$799,660	799,660		799,660
Insurance—casualty	6,343	6,473		12,816	4,534	17,350
General expense	140,000	50,700		190,700	57,500	248,200
Taxes 5¼ per cent	16,846	38,266	44,308	99,420	10,169	109,589
Total energy	$320,889	$728,889	$843,968	$1,893,746	$193,703	$2,087,449
Total cost	$1,743,742	$1,339,079	$843,968	$3,926,789	$856,524	$4,783,313

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The foregoing table divides the cost of power as between demand costs and energy costs in the method hereinbefore indicated and shows a cost for power at the high tension terminals of the distribution substations for 1915, amounting to $4,783,313.00.

The following table shows the cost of power as charged to the San Jose district substations for the year 1915 on the same basis:

TABLE NO. II.

Cost of Power to San Jose District Substations, 1915.

K.W. simultaneous demand } Entire system	128,000 K.W.	
K.W. substation demand } Entire system	168,200 K.W.	
K.W. hour deliverable to substations	597,300,000 K.W.	
Demand cost per K.W. simultaneous demand		$21.0681
Demand cost per K.W. substation demand		16.0278
Energy cost per K.W. hour of substation input		0.0034948
Total cost per K.W. hour, average		0.0080083
Charged to San Jose district:		
San Jose district estimated maximum demand	10,250 K.W.	
San Jose district estimated substation input	32,318,912 K.W. hours	
Case No. 1.		
Demand cost at $16.0278 per K.W. of substation demand		$164,285 00
Energy cost at $0.0034948 per K.W. hour of substation input		112,948 00
Total at $0.0085781 per K.W. hour, average San Jose district		$277,233 00
Case No. 2.		
Energy cost at $0.0080083, average entire system		$258,819 00

It thus appears that the average total cost per kilowatt hour of electric energy delivered at the high tension terminals of the distribution substations of defendant on the basis hereinbefore specified is $0.0080083. The demand cost per kilowatt simultaneous demand is $21.0681; the demand cost per kilowatt substation demand is $16.0278; and the energy cost per kilowatt hour of substation input is $0.0034948. The total cost of electric energy delivered at the high tension terminals of the distribution substations in the San Jose district for the year 1915 is $277,233.00 under Case No. 1 and $258,899.00 under Case No. 2.

2. San Jose District.

The electric service in the San Jose district comprises commercial and residence lighting, street lighting, industrial power, agricultural power for irrigation in the rural territory, and railway power supplying the San Jose street railways and the Peninsula Interurban Railway system. The following table shows the estimated consumers, connected load, sales and revenue for the year 1915:

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TABLE NO. III.

Estimated Consumers, Connected Load, Sales and Revenue for San Jose District.

Class of service	Consumers	Connected load kilowatt	Sales, kilowatt hours	Revenue
Residence lighting	5,826	5,116	1,231,430	$190,411
Commercial lighting	1,602	3,492	2,541,000	
Industrial power	408	4,690	2,852,000	61,603
Agricultural power	620	10,405	6,835,500	140,811
Street lighting	12	*320	705,000	33,919
City of Santa Clara	1	*180	617,000	8,870
Railway	15	*3,630	11,000,000	121,000
Gas department	----------	----------	37,200	372
Totals	8,504	27,733	25,819,130	$556,986

*Maximum demand.

The San Jose district comprises the cities of San Jose, Los Gatos, Mountain View, Sunnyvale, Santa Clara and Alviso, and unincorporated territory adjacent thereto, including all of Santa Clara County with the exception of Mayfield, Palo Alto and contiguous territory, included in defendant's Redwood district.

Defendant has a monopoly of the electric business in the San Jose district. The district is compact and the cost of service should be very reasonable.

The valuation prepared by Mr. G. R. Kenny, formerly connected with this Commission's gas and electrical department, which valuation was prepared with great care, will be used herein. In accordance with Mr. Kenny's segregation, three-fifths of the value of the lands, appliances and general structures of the San Jose steam plant has been included under the head of local distribution capital. The overhead charge for interest during construction has been reduced to 1 per cent, for the reason that this property has almost entirely been installed during operation and the unit costs were based upon actual costs and the period during construction was short. In addition, the Commission is allowing interest on average additions and betterments for the year and on material and supplies.

Defendant has questioned the allowance of $37,020.04 heretofore allowed by the Commission for working capital in connection with its electric business in the San Jose district. Defendant contends for an allowance of $68,060.31 for the items of cash, material and supplies, and accounts receivable, less consumers' advances. The item of materials and supplies might not be included, as interest on this item is later charged to capital account. Accounts receivable less consumers' advances, might be considered as a part of working capital, on the facts of this case, if accounts payable were deducted. I see

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no reason for departing from the basis of two months' operating expenses, regularly allowed by the Commission, and shall use the sum of $40,000.00 for working capital, material and supplies, in connection with defendant's electrical business in the San Jose district.

The rates for street lighting set forth in the order herein are based in large part on the complete and detailed report which was prepared by Mr. Piatt, one of the defendant's witnesses, and submitted on the rehearing herein.

The allowance heretofore made for depreciation, including both physical depreciation and functional depreciation, I consider to have been too small. After a careful re-examination, I am satisfied to allow $40,035.00, on the 6 per cent sinking fund basis.

The following table shows the estimated historical reproduction cost of defendant's property devoted to its electric business in the San Jose district as of December 31, 1914, including an allowance of $75,000.00 for new construction capital, $40,000.00 for working capital, materials and supplies, and a pro rata of all departments' general capital:

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TABLE NO. IV.

Estimated Historical Reproduction Cost—San Jose District, December 31, 1914.

	Commercial light and power exclusively	Street lighting exclusively	Railway power exclusively	All classes, not segregated	Total reproduction cost
Substations—					
Lands				$20,864	$20,864
Substation buildings	$2,438			22,083	24,521
General structures				3,239	3,239
Substation equipment	39,312	$12,743	$54,024	52,958	159,037
Miscellaneous equipment				2,117	2,117
Undistributed construction expenses			780		780
Total substations	$41,750	$12,743	$54,804	$101,261	$210,558
Distribution—					
Lands	$5,513			$6,188	$11,701
General structures				7,994	7,994
Poles and fixtures	205,356	*$36,484			241,840
Wire and insulators	212,283	19,910			232,193
Line switches, etc.	2,634				2,634
Overhead services	41,197				41,197
Underground conduits	23,665				23,665
Underground cables	14,406	14,822			29,228
Underground services	9,373				9,373
Arc lamps, etc.		31,594			31,594
Electroliers and brackets		164			164
Pole type transformers	237,163	1,452			238,615
Underground transformers	5,678				5,678
Meters	103,617				103,617
Tools and appliances				2,222	2,222
Horses and wagons	345				345
Autos, etc.	12,454			2,000	14,454
Furniture and fixtures				2,139	2,139
Undistributed construction expenses	3,973	51		665	4,689
Total distribution	$877,657	$104,477		$21,208	$1,003,342
Miscellaneous—					
Commercial arcs	$359				$359
Equipment on consumers' premises	7,023				7,023
Total miscellaneous	$7,382				$7,382
Grand San Jose district	$926,789	$117,220	$54,804	$122,469	$1,221,282
Other capital prorated—					
General capital, electrial department				$1,087	$1,087
All departments, nonlanded				2,318	2,318
All departments, landed				840	840
Supply department capital				3,933	3,933
Construction capital	$70,000	$1,000		4,000	75,000
Working capital	12,000	1,000		2,000	15,000
Material and supplies	23,000	500		1,500	25,000
Total other capital	$105,000	$2,500		$15,678	$123,178
Grand total capital	$1,031,789	$119,720	$54,804	$138,147	$1,344,460

*Includes prorata of jointly used poles.

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It is impossible to ascertain the original cost of this property. The total estimated historical reproduction cost as of December 31, 1914, is $1,344,460.00.

The following table shows the capital, cost of service and pertinent statistics in connection with the San Jose district for the year 1915, on the basis of normal average conditions:

TABLE NO. V.

Capital, Cost of Service, and Statistics, San Jose District, 1915

Capital—	
General—all classes of service	$138,147 00
Commercial light and power	1,031,789 00
Street lighting	119,720 00
Railway	54,804 00
Total	$1,344,460 00

Cost of services, including profit	Demand	Energy	Consumers	Total
(a) Transmission and local—				
Production cost	$164,285	$112,948		$277,233
Local cost	157,794	54,368	$49,303	261,465
Total	$322,079	$167,316	$49,303	$538,698
(b) Segregated to classes—				
Residence and commercial lighting	$72,378	$26,052	$43,166	$141,596
Individual and agricultural powers	172,644	66,794	5,974	245,412
Santa Clara	2,947	4,254	6	7.207
Subtotals	$247,969	$97,100	$49,146	$594,215
Street lighting	21,637	8,315	70	30,022
Railway	52,473	61,901	87	114,461
Totals	$322,079	$167,316	$49,303	$538,698

Statistics (estimated)—	
(a) Electric system substation demand	168,200 k.w
Electric system substation input	597,300,000 k.w. hr.
Local districts—	
Maximum demand	10,250 k.w.
Input	32,318,912 k.w. hr.
Sales	25,849,130 k.w. hr.
Efficiency	80 per cent

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TABLE V—(Continued).

Capital, Cost of Service, and Statistics, San Jose District, 1915.

	Class demand	Connected load	Consumers	Sales, k.w.h.
(b) Residence lighting	2,400 k.w.	5,116 k.w.	5,826	1,231,430
Commercial lighting		3,492 k.w.	1,602	2,541,000
Agricultural power	8,350 k.w.	13,950 h.p.	620	6,835,500
Industrial power		6,283 h.p.	408	2,852,000
Santa Clara	180 k.w.	*180 k.w.	1	617,000
Subtotals	10,930 k.w.	23,883 k.w.	8,457	14,076,930
Street lighting	320 k.w.	*320 k.w.	12	705,000
Railway power	3,630 k.w.	*3,630 k.w.	15	11,000,000
Company use—electric				30,000
Company use—gas				37,200
Totals	14,880 k.w.		8,484	25,849,130

*Maximum demand.

As will be observed, the total fair return for service, including interest on the investment, depreciation, and maintenance and operation, properly chargeable to the San Jose district on the basis of a normal year's conditions using the number of consumers and the connected load for the year 1915, is found to be the sum of $538,698.00.

3. Rates and Return Therefrom.

After a careful re-examination, using the evidence introduced at the rehearing, in addition to the evidence originally presented, I find as a fact that the rates set forth in the order herein are just and reasonable rates, and that the defendant's present rates, in so far as they differ from the rates herein established, are unjust and unreasonable.

Defendant has objected to the form of the rate heretofore established under Schedule A for general lighting and commercial lighting, which rate was as follows:

First 20 kilowatt hours per month.....7 cents per kilowatt hour
Next 330 kilowatt hours per month.....4 cents per kilowatt hour
Over 350 kilowatt hours per month.....3 cents per kilowatt hour
Minimum charge.....$1.00 per meter per month

After careful consideration, I can see no reason, unless it is thought necessary and desirable at this time to effect a further reduction, why the Commission should not adhere to these rates and the form of the schedule. It should be noted that this schedule embodies rates which apply to both domestic and commercial lighting as well as to miscellaneous small cooking and heating appliances and to small motors. The Commission intends to accomplish a reasonably equitable distribution of the cost of service as between individual consumers and classes of consumers. The only objection which, in my opinion, could be

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made with show of reason against these rates is that the resulting revenue will apparently be considerably in excess of the cost of service to the classes of consumers affected in addition to providing for a liberal return on the investment necessary to serve. While there is considerable question as to the equity of placing the burden, created by service supplied to one class of consumers which in itself may not be able to yield an adequate return upon other and more fortunately situated classes, still I feel that, under present conditions, the lighting rates should be uniform throughout the entire San Jose district, and should be such that the return to the utility, considering that district as a whole, shall be ample.

I am convinced that if the rates charged by Pacific Gas and Electric Company to its agricultural power consumers in the San Jose district are materially increased the result would be that a considerable part of this business would be lost to gasoline engines. While I am of the opinion that each class of business should at least yield a revenue such as would not under average conditions create an additional burden upon the other classes of consumers, it does not necessarily follow that all classes of service should show the same degree of profit or yield the same percentage of return as every other class.

While it appears from the segregation of costs hereinbefore made that the residence and lighting business will produce a net revenue materially in execss of its segregated charge, it by no means follows that the same conclusion would be true if, through an increase in the rates for agricultural power, defendant should lose a considerable part of this class of business. Under present conditions, however, as long as the defendant retains its agricultural power load, the rates herein established for residence and commercial lighting consumers, unquestionably will return revenue considerably in excess of the cost of service, including interest on the investment, depreciation and maintenance and operating expenses.

The schedule of rates prescribed in the order herein for residence and commercial lighting contemplates that Pacific Gas and Electric Company shall continue its established policy of furnishing at its own expense service wires and connections from its street mains to the first point of support on the premises of the consumer and that the company will continue to make connections and reconnections without cost to the consumer.

Defendant has made certain representations with reference to three changes in its agricultural and other power schedules appearing in subsection 4 of the order of August 28, 1914. Certain modifications have been made in subsection 4, as will appear in the order herein.

The following table shows the estimated revenue under the rates herein established:

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TABLE NO VI.

Estimated Revenue Under Rates Herein Established.

1. Residence and commercial lighting—						
Minima 3,013 consumers at $12.00 per year includes	313,643 k.w.h.				$36,156 00	
14 to 20 k.w.h per month, total annual sales	873,881 k.w.h. at	$.07	per k.w.h.		61,172 00	
20 to 350 k.w.h per month, total annual sales	1,556,111 k.w.h. at	.04	per k.w.h.		62,249 00	
Over 350 k.w.h. per month, total annual sales	1,027,795 k.w.h. at	.03	per k.w.h.		30,834 00	
Total residence and commercial lighting	3,772,430 k.w.h. at	.0497	per k.w.h.	Average		$190,411 00

2. Street lighting—

Location	Type	Schedule	Number of lamps	Annual revenue per unit		
San Jose	Series arcs	Moonlight	440	$43 80	$19,272 00	
Los Gatos	Series arcs	All night	35	51 00	1,785 00	
San Jose	Multiple arcs	All night	37	49 80	1,843 00	
Mountain View	Multiple arcs	Moonlight	18	42 60	767 00	
	Series incandescent	All night	156	22 20	3,463 00	
	Multiple incandescent	60 w. all night	35	10 80	378 00	
		100 w. all night	25	22 20	555 00	
San Jose	Electrolier	2,000 hours	222	26 38	5,856 00	
Total street lighting						$33,919 00

3. Santa Clara	617,000 k.w.h. at	$.0144	per k.w.h.		*8,870 00
4. Agricultural power	6,835,500 k.w.h. at	.0206	per k.w.h.		*140,811 00
5. Industrial power	2,852,000 k.w.h. at	.0216	per k.w.h.		*61,603 00
6. Railway power	11,000,000 k.w.h. at	.0110	per k.w.h.		*121,000 00
7. Gas department	37,200 k.w.h. at	.01	per k.w.h.		*372 00
Total estimated revenue from consumers					$556,986 00
Less uncollectible accounts					1,200 00
Total revenue to company					$555,786 00

*No change in rates.

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As shown in the foregoing table, the Commission estimates that the revenue which will be secured during the first year under the rates herein established, together with the revenue from the rates now in effect on the defendant's other class of service in the San Jose district, on the basis of a normal average year, will be $556,986.00, from which revenue the sum of $1,200.00 is subtracted for uncollectible accounts, leaving a total revenue of $555,786.00, as contrasted with a total estimated fair return of $538,698.00, as shown in Table No. V.

The following table shows the segregation of charges to the various classes of business on the basis hereinbefore indicated:

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TABLE NO. VII.

Segregation of Charges, San Jose District, 1915.

	Total	Commercial light and power	Residence and commercial lighting	Industrial and agricultural power	Santa Clara	Street lighting	Railway power
Statistics—							
(1) Maximum class demands (k.w.)	14,880	10,930	2,400	8,350	180	320	3,630
(2) Connected load (k.w.)	27,833	23,883	8,608	15,095	180	320	3,630
(3) Sales (k.w.h.)	25,781,930	14,082,930	3,772,430	9,687,500	617,000	705,000	11,000,000
(4) Consumers	8,484	8,457	7,428	1,028	1	12	15
Costs (including profit)—							
Demand costs:							
Production and transmission (1)	$164,285	$120,674	$26,498	$92,189	$1,987	$3,533	$40,078
Local district	157,794	(2)127,295	45,880	80,455	960	18,104	12,395
Totals	$322,079	$247,969	$72,378	$172,644	$2,947	$21,637	$52,473
Energy costs—							
Production and transmission (3)	$112,948	$61,681	$16,549	$42,430	$2,702	$3,088	$48,179
Local district	54,368	(3)35,419	9,503	24,364	1,552	5,227	13,722
Totals	$167,316	$97,100	$26,052	$66,794	$4,254	$8,315	$61,901
Consumer costs—							
Local district (4)	$49,303	$49,146	$43,166	$5,974	$6	$70	$87
Total cost of service	$538,698	$394,215	$141,596	$245,412	$7,207	$30,022	$114,461

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Defendant's brief submits the following table of figures with reference to revenue and cost for the year 1914:

TABLE NO. VIII.

Pacific Gas and Electric Company's Estimate of Revenue and Cost for 1914.

Gross revenue—per exhibit No. 43		$525,621 91
Costs:		
Total costs, exclusive of interest, depreciation and cost of power, as per exhibit No. 43	$140,713 60	
Depreciation, 4 per cent, sinking fund basis, obtained by applying life tables on pages 168 and 169 of transcript of evidence to valuation in exhibit No. 43	60,628 00	
Cost of power from transmission:		
K.W. demand and K.W. hours from exhibit No. 32. Demand and energy charges from exhibit No. 52.		
9,540 K.W. at $24.47	$233,443 80	
27,611,036 K.W. hours at $0.000917	25,319 32	
126,000 K.W. hours from Palo Alto 11 K.V. line at average cost $0.000372	1,180 87	
	$259,943 99	
Total costs, exclusive of interest on local capital		461,285 59
Net return available for interest on local capital		$64,336 32
Total valuation, December 31, 1914, exclusive of going concern value, franchises and other intangibles		$1,553,317 42
Per cent return		4.14 per cent

This estimate should be revised as shown in the following table:

TABLE NO. IX.

Corrected Estimate of Pacific Gas and Electric Company for Revenue and Cost, 1914.

Gross revenue		$525,621 91
Operating expenses, less cost of maintenance and operation of steam plant	$130,659 73	
Depreciation at 6 per cent sinking fund	40,000 00	
Cost of power from transmission to substation:		
9,540 K.W. at $16.03	$152,926 00	
27,611,036 K.W. hours at $0.00350	96,638 00	
126,000 K.W. hours, Palo Alto 11 K.V. line at $0.0094	1,184 00	
	$250,748 00	
Less taxes at 5¼ per cent	13,164 00	
Net cost from transmission	237,584 00	
Total cost, exclusive of interest on local capital		408,243 73
Net return available for interest		$117,378 18
Total investment, excluding steam plant, included in production, December 31, 1914		$1,269,460 00
Net return, per cent		9.24 per cent

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4. Extensions.

In the decision of August 28, 1914, herein, the Commission drew attention to the authorities holding that it is generally the duty of a gas or electric utility having a general franchise authorizing it to use the streets of a municipality, to make, at its own expense, all extensions necessary to serve customers within such municipalities. While exceptions may exist to this general rule, the rule itself was clearly established by the Supreme Court of the United States in *Russell* vs. *Sebastian*, 233 U. S. 195, decided on April 6, 1914.

Subsequent to the decision of August 28, 1914, herein, the Commission has made further careful inquiry into the entire subject of extensions by public utilities, as will appear from the decision of August 12, 1915, in Case No. 683, *In the matter of the practice of water, gas, electric and telephone utilities requiring deposits before rendering service.* Particular attention is drawn to Rules 15 and 16, as established by this Commission, referring to extensions. Rule 15 reads as follows:

> "A water, gas, electric or telephone utility which operates under a general franchise authorizing the occupancy of all the streets of a municipality shall make, at its own expense, such street extensions as may be necessary to serve applicants; provided, that in any case in which the construction of an extension at the utility's sole cost will, in its opinion, work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission."

On the rehearing, Mr. F. Emerson Hoar testified that on a careful consideration of all the conditions surrounding the service of electric energy by the defendant, it is entirely reasonable, in his opinion, to require the defendant to make, at its own expense, such extensions as are necessary to serve all intending customers for residence and commercial service in the city of San Jose, the city of Mountain View and the city of Los Gatos. Mr. Hoar was not prepared to express a definite opinion with reference to the city of Sunnyvale. I find from the testimony that each municipality should be regarded as a unit and that it is just and reasonable to require defendant to make, at its own expense, such extensions as are necessary to serve intending customers within the limits of the municipalities of San Jose, Mountain View and Los Gatos. In addition to this finding, I also find that it is just and reasonable to require defendant to make, at its own expense, the extensions necessary to serve R. J. Sullivan and F. Chiveriel (Informal Complaints No. 2988 and No. 4402), and O. M. Lanham (Informal Complaint No. 2985), in the city of San Jose. I find that the defendant has already voluntarily, at its own expense, made the other extensions testified to as being desired within the city of San Jose.

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In the matter of extensions within unincorporated territory, reference is made to Rule No. 16, established by this Commission in Case No. 683, and reading as follows:

> "A water, gas, electric or telephone utility shall make such reasonable extensions in unincorporated territory at its own expense, as it can agree upon with the applicant for service; provided, that in any case in which the construction of an extension at the utility's sole expense will in its opinion work an undue hardship upon the utility or its existing consumers, the matter may be submitted to the Commission as provided by section 36 of the Public Utilities Act, unless satisfactorily adjusted by an informal application to the Commission."

From the evidence in this case, I find that the defendant should, at its own expense, construct the extensions necessary to serve C. B. Kemble of Cupertino (Informal Complaint No. 1212), M. J. Lyon, near Los Gatos (Informal Complaint No. 1357) and E. R. Neil, near Los Altos (Informal Complaint No. 2975). The defendant has already made a number of extensions in unincorporated territory, referred to in the testimony herein. With reference to the remaining extensions testified to but not herein specifically referred to, I am not prepared to recommend that these extensions be made by the defendant at its sole expense. If any of these parties still desire service from the defendant, they may bring the matter further to the Commission's attention by the filing of a formal complaint, if a satisfactory conclusion can not be reached by negotiations with defendant.

5. Rules and Regulations.

In the order of August 28, 1914, herein, defendant was directed to prepare and submit to the Railroad Commission for filing, rules and regulations governing the distribution of electric energy in its San Jose district. The subject matter of a number of these rules and regulations has been covered by this Commission's decision in Case No. 683, hereinbefore referred to. I understand that Pacific Gas and Electric Company will shortly file revised proposed rules and regulations covering matters in addition to those covered by the decision in Case No. 683. I am of the opinion that no order is necessary herein with reference to the subject of rules and regulations.

I submit the following form of order:

ORDER.

The Railroad Commission having heretofore, on August 28, 1914, made and filed its opinion and order herein, and Pacific Gas and Electric Company having thereafter petitioned for a rehearing, and the Railroad Commission having thereafter suspended the effective date of said order of August 28, 1914, pending its final conclusion on the petition for

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rehearing, and evidence and argument having been received at various public hearings on the question whether a rehearing should be granted, and the parties having stipulated that the evidence and argument thus submitted should be considered to be the evidence and argument which should be submitted in case a rehearing were granted, and the Commission having given careful consideration to all the evidence herein presented, and the matter now being ready for decision,

The Railroad Commission hereby finds as a fact that the rates herein prescribed to be charged by Pacific Gas and Electric Company in its San Jose district are just and reasonable rates and that said Pacific Gas and Electric Company's rates now charged in said San Jose district are unjust and unreasonable in so far as they differ from the rates herein established. The Railroad Commission further finds that it is just and reasonable to require said Pacific Gas and Electric Company to make, at its own expense, such extensions as are necessary to serve intending customers within the cities of San Jose, Los Gatos and Mountain View, and particularly that it is just and reasonable to require said Pacific Gas and Electric Company to make, at its own expense, the extensions necessary to serve F. Chiveriel, R. J. Sullivan, and O. M. Lanham, in the city of San Jose, and C. B. Kemble, M. J. Lyon, and E. R. Neil, in unincorporated territory in the San Jose district.

Basing its order on the foregoing findings of fact and upon the additional findings of fact which are contained in the opinion which precedes this order,

It is hereby ordered as follows:

1. The petition of Pacific Gas and Electric Company for rehearing is hereby denied.

2. The following rates to be charged by Pacific Gas and Electric Company for general lighting, municipal street lighting and special street lighting, in the cities of San Jose, Los Gatos and Sunnyvale, and the unincorporated territory in the San Jose district are hereby established:

SAN JOSE DISTRICT.

SCHEDULE A.

Residence and Commercial Lighting Service.

Character of Service.

This schedule applies to general residence and commercial lighting, and also to energy consumed by electric irons, toasters, sewing machine motors, or any of the various lamp socket appliances.

Rate.

Based on monthly consumption per meter.

7 cents per kilowatt hour for the first 20 kilowatt hours.
4 cents per kilowatt hour for the next 330 kilowatt hours.
3 cents per kilowatt hour for all over 350 kilowatt hours.
Minimum monthly charge, $1.00 per meter.

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SAN JOSE DISTRICT.

SCHEDULE B.

Municipal Street Lighting Service.

Character of Service.

This schedule of rates applies to all street, highway, and other public outdoor lighting coming under the following classes of service and includes installation and all maintenance and operation and lamp renewals necessary for such service.

Unless otherwise agreed to between company and consumers, the following shall apply:

Moonlight schedule—2,240 hours burning.
All night schedule—4,000 hours burning.
Midnight schedule—2,000 hours burning.

I.

Four ampere D. C. Luminous Series Arcs.

Moonlight and All Night Schedules.

Rate.

$33.00 per lamp per year plus 45 cents per 100 lamp hours of burning under schedule. Payable monthly.

II.

Six and six-tenths ampere Inclosed Carbon Arcs.

Moonlight and All Night Schedules.

Rate.

$31.80 per lamp per year plus 45 cents per 100 lamp hours of burning under schedule. Payable monthly.

III.

Electroliers 200–300 watt Tungstens.

All Schedules.

Rate.

$18.00 per electrolier per year plus 1.5 cents per 1,000 watt hours based on rated capacity of lamps. Payable monthly.

IV.

Series or Multiple 100 watt Tungsten Incandescent Lamps.

All Night Schedules.

Rate.

$16.20 per lamp per year plus 15 cents per 100 lamp hours burning under schedule. Payable monthly.

V.

Multiple 60 watt Carbon Incandescent Lamps.

All Night Schedule—4,000 hours per year.

Rate.

$10.80 per lamp per year. Payable monthly.

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It is recommended to Pacific Gas and Electric Company that the company establish these rates in the remaining portions of its San Jose district, as to which portions the Commission was unable to make its order in Decision No. 1758, for the reason that at the time said decision was rendered, the Commission did not have jurisdiction to establish defendant's rates in a portion of the San Jose district.

3. The following changes in the agricultural and other power schedules of Pacific Gas and Electric Company, in its San Jose district, are hereby established:

A.

The present agricultural schedules shall apply to motors of less than 5 horsepower, provided the minimum guarantee shall in no case be less than $24.00 per year.

Any installation may operate under the schedule of rates for a larger installation of the same class of service provided the minimum required for the larger installation is guaranteed.

The company may require that installation of less than 5 horsepower be single phase.

B.

Consumers may have the option of combining motors of 5 horsepower or less and lighting at the lighting rates and minimum charge.

C.

All classes of power service.

The minimum charge and rate on installations of two or more motors served through one meter installation, may at the option of the consumer, where proper demand limiting devices are used, be based on the maximum rated capacity of motors which can be operated simultaneously.

4. On or prior to December 20, 1915, Pacific Gas and Electric Company shall file with the Railroad Commission new schedules of rates, in conformity with the rates established in paragraphs 2 and 3 of this order.

5. The rates herein established shall apply to all of Pacific Gas and Electric Company's customers within the San Jose district, dependent upon the nature of each customer's respective service, and no deviation from these rates will be permitted.

6. Except in so far as herein modified, Pacific Gas and Electric Company's existing rates for electric service in the San Jose district may continue in effect until hereafter altered.

7. Within thirty (30) days from the receipt of written notice from an intending customer, Pacific Gas and Electric Company shall, at its own

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expense, make such extensions as may be necessary to serve such intending customers in the municipalities of San Jose, Mountain View and Los Gatos. Furthermore, and particularly, within thirty (30) days from receipt of written notice stating that the intending customer still desires such service, Pacific Gas and Electric Company shall, at its own expense, construct the extensions necessary to serve F. Chiveriel (Informal Complaint No. 2988), R. J. Sullivan (Informal Complaint No. 4402), and O. M. Lanham (Informal Complaint No. 2985), and the company shall thereafter deliver electric energy to them at its established rates for the city of San Jose.

8. Within thirty (30) days from the receipt of written notice, Pacific Gas and Electric Company shall, at its own expense, make the extensions necessary to serve C. B. Kemble (Informal Complaint No. 1212), M. J. Lyon (Informal Complaint No. 1357), and E. R. Neil (Informal Complaint No. 2975), which persons shall thereafter be served by Pacific Gas and Electric Company at its regularly established rates.

9. In all other respects, Case No. 477 is hereby dismissed.

10. The effective date of this order shall be December 20, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of November, 1915.

Decisions Nos. 2948 and 2949, grade crossings; not printed. See end of volume.

DECISION NO. 2950.

IN THE MATTER OF THE APPLICATION OF THE VISALIA ELECTRIC RAILROAD COMPANY FOR RELIEF FROM THE PROVISIONS OF CHAPTER 494 OF THE STATUTES OF THE STATE OF CALIFORNIA FOR THE YEAR 1915.

Application No. 1982.

Decided December 2, 1915.

REPORT OF THE COMMISSION.

ORDER.

Visalia Electric Railroad Company, which is engaged in maintaining and operating by electricity an interurban railroad system in the county of Tulare, State of California, having applied to the Railroad Commission for an order permitting applicant to require, and continue

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to require and permit, its motormen, conductors, brakemen and trainmen to receive, deliver or transmit at any of its receiving or forwarding instruments upon any telephone line or lines, an order for the movement of any train upon the system of applicant, and the Commission being duly advised in the premises,

It is hereby ordered that this application be and the same is hereby granted.

Dated at San Francisco, California, this 2d day of December, 1915.

DECISION No. 2951.

IN THE MATTER OF THE APPLICATION OF TULARE COUNTY POWER COMPANY TO SELL ITS ELECTRICAL DISTRIBUTING SYSTEM AND PLANT TO MOUNT WHITNEY POWER AND ELECTRIC COMPANY AND OF MOUNT WHITNEY POWER AND ELECTRIC COMPANY TO PURCHASE SAID PROPERTY.

Application No. 1756.

Decided December 2, 1915.

Original order in the above entitled proceeding having provided that before the Tulare company could transfer its franchises to the Mount Whitney company, the latter company should file a list of the franchises to be transferred and a stipulation to the effect that it would not claim a value therefor other than the actual cost thereof, and such action having been taken by applicant, final approval of the transfer of franchises listed given.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas this Commission in its order found in Decision No. 2629, dated July 23, 1915, authorized Mount Whitney Power and Electric Company to acquire the property and franchises of Tulare County Power Company, provided said Mount Whitney Power and Electric Company file with this Commission a stipulation to the effect that it does not and never will claim in any proceeding before this Commission, or any other public body, a value for the franchises acquired by it from Tulare County Power Company in excess of the actual cost to Tulare County Power Company of acquiring said franchises, and provided further that Mount Whitney Power and Electric Company shall file with this Commission for approval a statement naming the franchises which it proposes to acquire from Tulare County Power Company; also a statement showing under which franchises it will hereafter operate; and

Whereas Mount Whitney Power and Electric Company has filed with this Commission the aforementioned stipulation relating to the value of the franchises which it desires to acquire from Tulare County Power Company; and

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Whereas Mount Whitney Power and Electric Company reports that it desires to acquire from Tulare County Power Company the following franchises, to wit:

> "The franchise granted the Tulare County Power Company, by the county of Tulare, November 7, 1911, for the term of fifty years;
> The franchise granted the Tulare County Power Company, by the city of Lindsay, March 5, 1912, but mentioned in said Decision No. 2629 as being granted as of March 5, 1911, for the term of fifty years;
> The franchise granted the Tulare County Power Company, by the city of Tulare, March 18, 1912, for the term of fifty years; and
> The franchise granted the Tulare County Power Company, by the city of Exeter, March 22, 1912, for the term of fifty years."

And whereas Mount Whitney Power and Electric Company reports that it will henceforth operate under the franchises owned by it prior to taking over or acquiring any of the franchises of Tulare County Power Company, and that it will not operate under any of the franchises acquired from Tulare County Power Company without first obtaining permission from the Railroad Commission of the State of California; and good cause appearing,

It is hereby ordered that Tulare County Power Company be given and it is hereby given authority to sell the aforementioned franchises to Mount Whitney Power and Electric Company.

The Railroad Commission of the State of California hereby finds as a fact, for the purpose of this proceeding, that the parties to this proceeding have filed the documents and instruments referred to in the order dated July 23, 1915, herein, and have thus complied with the conditions of said order.

Dated at San Francisco, California, this 2d day of December, 1915.

DECISION NO. 2952.

WINIFRED F. MARR

vs.

LOS ANGELES AND ARIZONA LAND COMPANY.

Case No. 511.

Decided December 2, 1915.

REPORT OF THE COMMISSION.

ORDER DENYING APPLICATION FOR REHEARING.

Winifred F. Marr having filed an application for rehearing in this proceeding, and the Commission, after careful investigation, being of the opinion that there is no merit in said application for rehearing,

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It is hereby ordered that said application for rehearing be and the same is hereby denied.

Dated at San Francisco, California, this 2d day of December, 1915.

DECISION No. 2953.

IN THE MATTER OF THE APPLICATION OF THE LONG BEACH CONSOLIDATED GAS COMPANY FOR LEAVE TO FILE A SCHEDULE OF RATES FOR GAS, MODIFYING AND CHANGING ITS EXISTING SCHEDULE NOW ON FILE.

Application No. 1981.

Decided December 2, 1915.

The Commission, in connection with another proceeding before it, is conducting an investigation into the rates of applicant in the city of Long Beach. Pending a final determination of such case, applicant applies for permission to place in effect a slightly higher schedule of rates in consideration of its arrangement to serve its consumers natural gas of 1,000 B. t. u. instead of the mixture of artificial and natural gas now served, and it appearing that such request is reasonable, application granted, provided that applicant file a stipulation agreeing that if the rate herein established is found to be unreasonable in connection with the Commission's investigation, it shall refund to consumers the difference between the rate therein established and the amounts collected under the present schedule.

REPORT OF THE COMMISSION.

Application having been made by Long Beach Consolidated Gas Company for authorization to put into effect the following rates for natural gas containing not less than 1,000 B. t. u. per cubic foot in the city of Long Beach, to wit:

For consumption of less than 1,000 cubic feet per month.

300 cubic feet or less	50 cents per month
400 cubic feet or less	60 cents per month
500 cubic feet or less	70 cents per month
600 cubic feet or less	80 cents per month
700 cubic feet or less	90 cents per month
800 cubic feet or less	$1.00 per month
900 cubic feet or less	1.15 per month
1,000 cubic feet or less	1.25 per month

For consumption of over 1,000 cubic feet per month.

First 1,000 cubic feet	$1.25
Next 6,000 cubic feet	1.15 per M.
Next 8,000 cubic feet	.75 per M.
Next 15,000 cubic feet	.65 per M.
Next 60,000 cubic feet	.50 per M.
All over 90,000 cubic feet	.40 per M.

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And whereas the said company is now serving to its consumers in Long Beach a mixture of artificial and natural gas of not to exceed 800 B. t. u. per cubic foot, for which mixed gas the rate is now $1.00 per 1,000 cubic feet; and

Whereas applicant proposes to serve to its consumers in the city of Long Beach natural gas of not less than 1,000 B. t. u. per cubic foot, if permitted to charge the rates herein first above set out; and

Whereas applicant has made a showing to this Commission which makes it appear that because of the higher heat unit efficiency of the natural gas which it is proposed to serve, much less gas will be used to produce the same results in heat as are now derived from the use of mixed gas; and

Whereas applicant is unwilling to furnish such gas at the present rate of $1.00 per 1,000 cubic feet, on the ground that the consumption of the higher heat unit gas will be very much less than the consumption of the present mixed gas, and, therefore, the gross revenue of applicant, it is alleged, will fall off to such an extent that under the existing rate of $1.00, serious financial embarrassment will follow; and

Whereas there is now pending before this Commission a proceeding on complaint made by the city of Long Beach against the rates for gas charged by applicant herein in the city of Long Beach, and in said proceeding this Commission will fix the just and reasonable rate to be paid for gas in said city; and

Whereas applicant has offered to pay back to the consumers of its gas in Long Beach the excess, if any, over the rates fixed by this Commission in the before mentioned case now pending, and the rates contained in this application; and

Whereas, in the judgment of this Commission, it will be of great benefit to the people of the city of Long Beach to be furnished at once with a supply of pure natural gas containing not less than 1,000 B. t. u. per cubic foot; now, therefore, for the aforesaid reasons,

It is hereby ordered by the Railroad Commission of the State of California, that applicant, Long Beach Consolidated Gas Company, may file with this Commission the schedule of rates hereinbefore set forth, and that said rates shall become effective from the 1st day of December, 1915.

Provided that nothing herein contained shall be construed as a finding on the reasonableness of the rates herein authorized.

Provided, however, that this order shall not take effect until applicant, Long Beach Consolidated Gas Company, shall have filed with this Commission an agreement, in writing, satisfactory to the Commission, to the effect that it will, on the direction of the Commission, repay to consumers of gas in the city of Long Beach the excess, if any, over the rates hereafter established by the Railroad Commission for the

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supply of gas in the city of Long Beach and the rates herein authorized to become effective as of December 1, 1915, with interest at 6 per cent on such excess, and applicant shall have also filed with this Commission a satisfactory bond in the sum of not less than $25,000.00 as security for the return of said amounts to the said consumers.

Dated at San Francisco, California, this 2d day of December, 1915.

Decision No. 2954, grade crossing; not printed. See end of volume.

DECISION No. 2955.

IN THE MATTER OF THE APPLICATION OF SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS FOR AUTHORITY TO ISSUE PROMISSORY NOTES AND BONDS.

Application No. 1971.

Decided December 3, 1915.

Applicant applies for and is granted permission to issue its 6 per cent one-day promissory notes of an aggregate amount of not to exceed $218,459.64, and to pledge as security therefor $337,000.00 face value of its general lien bonds, such notes to be issued in renewal of twelve certain promissory notes of a like face value, heretofore authorized by the Commission.

W. H. Smith, for Applicant.

REPORT OF THE COMMISSION.

THIELEN, *Commissioner.*

This is an application of San Francisco-Oakland Terminal Railways for authority to issue one-day notes to refund notes heretofore authorized by this Commission, and to pledge general lien mortgage bonds to secure the payment of said notes.

Applicant desires to issue one-day notes to refund the balance due on notes, as follows:

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Payee	Issue Date of	Date of maturity	Rate of interest	Amount			Number of 5 per cent $1,000 general lien bonds deposited as collateral		
				Original	Paid	Balance due	Original	Released	Balance pledged
Central National Bank	7/ 2/14	7/ 1/15	6	$28,000 00	None	$28,000 00	42	None	42
Bank of California, N. A.	7/ 2/14	7/ 1/15	6	28,000 00	None	28,000 00	42	None	42
Savings Union Bank and Trust Company	7/ 2/14	7/ 1/15	6	28,000 00	None	28,000 00	42	None	42
Anglo and London-Paris National Bank	7/ 2/14	7/ 1/15	6	28,000 00	None	28,000 00	42	None	42
Oakland Bank of Savings	7/ 2/14	7/ 1/15	6	28,000 00	None	28,000 00	42	None	42
Central National Bank	12/29/14	7/ 1/15	6	24,750 00	$16,180 06	8,569 94	37	23	14
Bank of California, N. A.	12/29/14	7/ 1/15	6	24,750 00	16,180 06	8,569 94	37	23	14
First National Bank of Oakland	12/31/14	7/ 1/15	6	24,750 00	18,660 06	6,089 94	37	27	10
Savings Union Bank and Trust Company	12/29/14	7/ 1/15	6	24,750 00	16,180 06	8,569 94	37	23	14
Anglo and London-Paris National Bank	12/30/14	7/ 1/15	6	24,750 00	16,180 06	8,569 94	37	23	14
Oakland Bank of Savings	12/29/14	7/ 1/15	6	24,750 00	16,180 06	8,569 94	37	23	14
Central National Bank	1/30/15	7/ 1/15	6	55,000 00	25,480 00	29,520 00	82	35	47
Totals				$343,500 00	$125,040 36	$218,459 64	514	177	337

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Five of the notes, each for the sum of $28,000.00, were issued under the authority granted by Decision No. 1604, dated June 23, 1914; six of the notes, each for the sum of $24,750.00, were issued under the authority granted by Decision No. 2019, dated December 21, 1914, and one of the notes, for the sum of $55,000.00, was issued under the authority granted by Decision No. 2109, dated January 29, 1915. Said decisions also authorized applicant herein to pledge general lien bonds in such a ratio that the face value of the notes should at no time be less than 66⅔ per cent (66⅔%) of the face value of the bonds pledged as collateral.

The authority herein granted does not commit the Commission, directly or indirectly, to a favorable determination of either Application No. 990 or No. 1152.

Applicant asks that it be permitted to pledge its general lien mortgage bonds, now held by the above mentioned banks, to secure the payment of the one-day notes which it desires to issue. Subject to the conditions found in Decision No. 1604, dated June 23, 1914, and to which reference has been made, I believe applicant's request should be granted.

I herewith submit the following form of order:

ORDER.

San Francisco-Oakland Terminal Railways having made application to this Commission for authority to issue one-day 6 per cent notes in the sum of $218,459.64, and to pledge general lien mortgage bonds of the face value of $337,000.00, and a public hearing having been held,

It is hereby ordered that San Francisco-Oakland Terminal Railways be given authority and it is hereby given authority to issue one-day 6 per cent promissory notes in a sum not to exceed $218,459.64.

It is hereby further ordered that San Francisco-Oakland Terminal Railways be given authority and it is hereby given authority to issue $337,000.00 face value of its general lien bonds as collateral security for the issue of said notes in the sum of $218,459.64, said bonds to be issued under applicant's general lien mortgage, a copy of which has been filed with this Commission in connection with Application No. 990.

The authority herein given is given upon the following conditions, and not otherwise:

(1) The notes and bonds herein authorized shall be issued to the banks hereinafter mentioned in lieu of notes and bonds now held by them in the following amounts:

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Payee	Date of issue	Term	Rate of interest	Face amount of notes authorized to be issued	Number of $1,000 general lien mortgage bonds authorized to be pledged as collateral
Central National Bank of Oakland	July 1, 1915	1 day	6	$28,000 00	42
Bank of California, N. A.	July 1, 1915	1 day	6	28,000 00	42
Savings Union Bank and Trust Company	July 1, 1915	1 day	6	28,000 00	42
Anglo and London-Paris National Bank	July 1, 1915	1 day	6	28,000 00	42
Oakland Bank of Savings	July 1, 1915	1 day	6	28,000 00	42
Central National Bank of Oakland	July 1, 1915	1 day	6	8,569 94	14
Bank of California, N. A.	July 1, 1915	1 day	6	8,569 94	14
First National Bank of Oakland	July 1, 1915	1 day	6	6,089 94	10
Savings Union Bank and Trust Company	July 1, 1915	1 day	6	8,569 94	14
Anglo and London-Paris National Bank	July 1, 1915	1 day	6	8,569 94	14
Oakland Bank of Savings	July 1, 1915	1 day	6	8,569 94	14
Central National Bank of Oakland	July 1, 1915	1 day	6	29,520 00	47
Totals				$218,459 64	337

(2) The notes herein authorized to be issued shall be issued only to the payees herein specified, who shall agree to hold said notes until the notes are paid or refunded.

(3) As payments are made, from time to time, on the notes herein authorized, bonds issued as collateral thereon shall be returned to applicant's treasury in the amount of $1,000.00 of bonds for each $666.66 of payments on any notes, which bonds shall not thereafter be again issued without the approval of this Commission.

(4) Within fifteen days after the issue of any notes herein authorized to be issued, applicant shall report to this Commission the name of the payee of the note thus issued, the face value thereof, the term of the note, the rate of interest and the face value of the bonds pledged as collateral security for such note.

(5) The authority herein granted shall apply only to such notes and to such bonds as shall have been issued on or before January 30, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 3d day of December, 1915.

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Decision No. 2956.

IN THE MATTER OF THE APPLICATION OF F. W. GOMPH, AGENT, PACIFIC FREIGHT TARIFF BUREAU, IN THE NAME AND ON BEHALF OF CERTAIN RAILROADS, TO AMEND THE RULES AND REGULATIONS PERTAINING TO THE VALUATION OF LIVE STOCK SHIPPED UNDER CONTRACT.

Application No. 1807.

Decided December 4, 1915.

Applicant, representing certain railroads operating in the State of California, applies for permission to establish a minimum value on shipments of cattle, contending that under the present schedule the rate is based on the shipper's declared valuation, and there is a considerable tendency on the part of shippers to undervalue shipments moving intrastate, there being a minimum value schedule for interstate shipments, and it appearing that such a rule is justified, application granted.

Geo. D. Squires, for Applicant.

Seth Mann, for Miller & Lux et al., Protestants.

J. O. Bracken, for Salles and Chicorp et al., Protestants.

F. F. Gregson, for Associated Jobbers of Los Angeles, Protestants.

Report of the Commission.

Loveland, *Commissioner.*

This is an application filed September 27, 1915, under section 63 (*a*) of the Public Utilities Act, by F. W. Gomph, agent, Pacific Freight Tariff Bureau, and also on behalf of eighteen railroads, seeking authority to amend Rule 9-A of Pacific Freight Tariff Bureau's Circular No. 2-B, C. R. C. No. 107, and corresponding rules of individual carrier's publications covering "Valuations of Live Stock."

The necessity for the amendment herein asked is set forth as a desire to bring about uniformity between rules applying to interstate and intrastate shipments. Formerly, as will hereinafter appear, the interstate rule was practically the same as that now prevailing in California, but the passage of what is known as the Cummins Act, entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906, said Cummins Act approved March 4, 1915, and effective ninety days after its passage, placed upon shippers the necessity of stating actual value of shipments and upon carriers the obligation of settling at that valuation in case of loss or damage.

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Thereafter, by the decision of the Interstate Commerce Commission in Case No. 6766, *Iowa State Board of Railway Commissioners et al.* vs. *The Atchison, Topeka and Santa Fe Railway Company et al.*, decided July 30, 1915, the former rules and regulations applicable to interstate shipments were changed to conform to the provisions of the Cummins Act, above mentioned, since which time the carriers have taken the matter before many of the state commissions and secured the adoption by such commissions of rules and regulations conforming to the interstate rules and regulations, which resulted from the Cummins Act.

The Railroad Commission of California is now asked to permit the amendment herein prayed for, to bring about uniformity between interstate and intrastate shipments.

The rule in Bureau Circular No. 2-B, which is practically the same in the tariffs of individual carriers, is as follows:

Rule 9-A. Valuation of Live Stock.

"(*a*) Rates on live stock provided in tariffs governed by this circular and corresponding rules mentioned, vary according to the valuations stated by shipper and as carriers have no means of determining values of live stock when tendered for transportation, shippers will be required to declare in writing the valuation at time and place of shipment. Where shippers refuse to declare value and execute live stock contract, live stock will not be accepted for transportation.

(*b*) Rates named in tariff and as amended are based upon values declared by shippers, not exceeding the following under contract:

Each horse or pony (gelding, mare or stallion), mule, jack or jenny	$100
Each colt, under one year	50
Each ox, bull or steer	50
Each cow, or burro	30
Each calf	10
Each hog	10
Each sheep or goat	3

(*c*) Live stock exceeding values shown above: Where the valuation declared by shippers exceeds the values shown above an addition of three (3) per cent will be made to the rate per car for each fifty (50) per cent or fraction thereof, of additional declared value per head.

(*d*) These companies are not common carriers of live stock of values greater than $800.00 per head, and will not accept shipments for transportation where the declared valuation is in excess of $800.00 per head.

(*e*) When declared value of animals is different, the rate per car will be based on the highest value declared for any one animal in the car.

(*f*) Valuation of other animals, such as range horses, which are subject to a lower valuation than above, will be specifically provided for in the tariffs publishing rate on that particular class of live stock."

The application, if granted, would change the rules to conform closely to those now in effect on interstate traffic. The proposed rule reads:

Valuation of Live Stock.

"(*a*) Rates on live stock provided in tariffs governed by this circular and corresponding rules mentioned, vary according to the value stated by shipper and as carriers have no means of determining values of live stock when tendered for

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transportation, shippers will be required to declare in writing the actual valuation at time and place of shipment. Where shippers refuse to declare value and execute live stock contract, live stock will not be accepted for transportation.

(*b*) Rates named in tariff and as amended are based upon actual values declared by shippers, not exceeding the following under contract:

Each horse or pony (gelding, mare or stallion), mule, jack or jenny	$150
Each colt, under one year	75
Each ox, bull or steer	75
Each cow	50
Each burro	30
Each calf	20
Each hog	15
Each sheep or goat	5
Feeder cattle, each	50
Range horses, each	75

(*c*) Live stock exceeding values shown above: Where the actual valuation declared by shippers exceeds the values shown above an addition of two (2) per cent will be made to the rate per car for each fifty (50) per cent or fraction thereof, of additional declared value per head.

(*d*) These companies are not common carriers of live stock of value greater than $800.00 per head and will not accept shipments for transportation where the declared valuation is in excess of $800.00 per head.

(*e*) When declared actual value of animals is different the rate per car will be based on the highest actual value declared for any one animal in the car."

To make the matter clear and easily understood, the following explanation is given:

Prior to July 3, 1915, shippers had the option of forwarding live stock, in carloads, at one of two rates. The first being a contract rate, whereby in case of loss or damage the carrier should not be liable in excess of the values set forth in the contract; the second was free of conditions or limitations and placed the entire responsibility of loss or damage upon the carrier. On the date mentioned above the rule was changed, and live stock is not now accepted for transportation unless shippers declare, at the time and place of shipment, in writing, the value of the stock. Charges are graduated, 3 per cent being added per car for each 50 per cent or fraction thereof of additional declared value per head in excess of the minima shown in Rule 9-A.

It would appear from testimony that the actual values of the different kinds of live stock at the present time are greatly in excess of the declared values which shippers set forth in their stock contracts. It is a fact that no effort is made to state actual values. If the stock is killed in transit settlement for the loss is made on the declared valuation shown in the contract, provided the actual value of the stock equals or exceeds the value set forth, and on the actual value if the animals are worth less than the declared value. Stated differently, the shipper in consideration of the lower transportation charge is willing to assume the risk and carry his own insurance.

There is a considerable movement of feeder cattle between points within this State, and the average value of these animals is lower than

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the minimum value now carried in the present contracts. Under the new rule feeder cattle will be given the minimum contract rates when their value does not exceed $50.00 per head, and it is therefore apparent that no increases in charges will result to this particular class of stock. Starving cattle are sometimes carried long distances to fresh pastures, but since carriers invariably publish low special commodity rates to cover such emergency movements, this stock will also not be affected by the changes.

The testimony goes to some length into the reasonableness of the changes. It is claimed that the minimum values given in the new rule are approximately the average actual values of the stock, and that accordingly there will be but few increases in charges. It is even asserted that the changes will result in some decreases, especially to shippers who in the past have forwarded their stock under actual value. Consideration is also given to the fact that carriers will assume the entire liability for the loss and damage, and that the time for entering claims and the time for entering suits in the civil courts for damages will be extended.

The record shows that live stock has greatly increased in value during the past twenty years, particularly beef cattle, while freight charges in many instances have been reduced. Some stress was laid upon the fact that agents of the carriers submitted the proposed rule to interested shippers, that there were no objections made by dealers at either Sacramento, Stockton or points in the San Joaquin Valley, and that Los Angeles had signified its approval of the rule but later withdrew. Therefore the only protestants were firms located at San Francisco and Los Angeles.

It is asserted by representatives of the carriers that one of the chief reasons for making the application is to equalize the conditions between interstate and intrastate traffic. Under the present adjustment, interstate charges are higher than intrastate charges from the same territory, even though the rate may be the same; this for the reason than an interstate shipper is compelled to furnish the actual value of the live stock while an intrastate shipper can arbitrarily fix values less than actual to suit his convenience and pay charges accordingly.

The situation is illustrated by referring to the rates to San Francisco, per 36-foot car, from Reno, Nevada, and from Truckee, California, both points being in the same rate zone, yet the charges will be greater from Reno than from Truckee for the reason, as stated above, that the interstate shipper must give actual values while the intrastate shipper uses fictitious values. The same is true of adjacent shipping points in Oregon and Arizona. If stock moves from points on the Nevada-California-Oregon Railway in California, such as Alturas, Madeline

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or Termo, it will take the same rates but a less charge per car if routed via Doyle, California, and the Western Pacific Railway, than if sent through Reno, Nevada, and thence by the Southern Pacific, the one involving an intrastate transaction, the other an interstate. Where shipping stations are near the state lines the stock will probably be driven to intrastate points whenever the actual values of the same would create a greater charge from the interstate point. The incongruity of the present adjustment is very manifest. The rules and regulations adopted by the Interstate Commerce Commission, and now applicable to interstate shipments, present some features which would appear to be of advantage to shippers, to wit: a longer time in which to file claims for damage, increased liability of carriers in case of damage; but the protestants contend that neither the added liability of the carriers nor the extension of time in which to file claims is of value or interest to them for the reason that all claims are filed promptly upon receipt of consignments and that the percentage of stock killed in transit is practically nil. However, the testimony of one of the carriers' witnesses, to the effect that recently his company paid a claim for $8,000.00 to cover 142 head of cattle killed in Arizona, is evidence that loss and damage do occur in the shipment of cattle.

The rule went into effect on interstate traffic October 15, 1915, and the assistant general freight agent of the Southern Pacific Company testified that a check of the live stock shipments from interstate points, October 15 to October 30, 1915, failed to show a single consignment penalized because of excess value. This report would indicate that the base value is not too low.

The exhibits and testimony of protestants indicate that there will be some increases against cattle, hogs and sheep when choice fat animals are forwarded to slaughtering houses in straight carload lots, but the increases as shown by the exhibits will be slight. I am of the opinion that the added liability assumed by carriers will more than offset any excess freight charges.

Testimony was also introduced to the effect that it is impracticable to furnish the actual values per head. I recognize the impossibility of giving the actual value of each animal in a car, and recommend that the rule adopted by this Commission be that when a shipper has done his best to give the actual average value per head he has complied with the intent of the tariff regulations.

With this understanding, I believe, in the interest of bringing about uniformity as nearly as possible between interstate and intrastate rules and regulations, the application should be granted, subject to the condition, as to shippers stating average value, heretofore mentioned.

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I recommend the following form of order:

ORDER.

Application having been made by F. W. Gomph, agent, Pacific Freight Tariff Bureau, for authority to amend the rules and regulations governing the transportation of live stock, and a public hearing having been held and a full investigation of the matters and things involved having been had, and the Commission being fully apprised in the premises,

It is hereby ordered that the application be and the same is hereby granted, with the understanding, however, as set forth above, that the shipper is permitted and required to give the actual average value to the best of his judgment.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of December, 1915.

DECISION No. 2957.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF THE GLENDALE AND MONTROSE RAILWAY.

Case No. 765.

Decided December 4, 1915.

Investigation upon the Commission's own motion to determine the various elements entering into the value of respondent's property.

Findings of fact: That the reproduction cost of the operative physical property of respondent as of March 31, 1915, is the sum of $204,350.54, including nonoperative property, $205,975.65; that the reproduction cost less depreciation or present value of the operative physical property of respondent as of March 31, 1915, is the sum of $189,408.63, including nonoperative property, $191,001.61.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

OPINION AND FINDINGS.

This proceeding was brought on the Commission's own initiative for the purpose of ascertaining various elements entering into the value of the property of the Glendale and Montrose Railway. For the general procedure in these valuation cases, and for a general description of the work performed by this Commission's engineering depart-

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ment, reference is hereby made to the Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company, and Case No. 210, being the matter of ascertaining the value of the property of the Tonopah and Tidewater Railroad Company.

These valuations were undertaken under section 20 of the Stetson-Eshleman Act, effective February 10, 1911, and continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to this proceeding are sections 47 and 70. As is usual in these cases, the Commission will make findings of fact on specified elements bearing on the question of the value of this property, as shown by the evidence in this case, but will not make a finding on the question of the ultimate value of the property, irrespective of the purpose for which the value is ascertained.

I shall, in connection with this particular inquiry, consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction cost, as defined.
6. Reproduction cost less depreciation, as defined.

It seems desirable to first define the three elements of value which we propose to find:

> The term "original cost" means the original book cost, and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's or this Commission's classifications, in cash or its equivalent in terms of cash, by the public utility for its operative property in the State of California, as of the date of the valuation.
>
> The term "reproduction cost" means the estimated cost in cash of reproducing, in the condition (new or second-hand) in which it was acquired, the physical property of the public utility in the State of California, as of the date of valuation, to which is added the value of all operative lands, based on the market value of adjacent and similar lands, the actual or estimated cost of acquiring franchises and the estimated cost of overhead expenditures for engineering, law, interest and similar items.
>
> The term "reproduction cost less depreciation" is defined as the "reproduction cost" less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, inadequacy or other causes, this diminution being called "depreciation," and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called "appreciation." "Reproduction cost less depreciation" might be defined as "depreciated and appreciated reproduction cost."

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In accordance with this Commission's order dated February 8, 1915, the Glendale and Montrose Railway on April 6, 1915, filed an inventory and appraisal of its property, together with a statement of original cost and an estimate of its reproduction cost and reproduction cost less depreciation. This inventory and appraisal was not submitted as of a fixed date, but as later developed, was made as of about March 31, 1915. The totals, as shown in the company's report, were subsequently modified by certain additions, as shown in the company's letter to the Commission of May 22, 1915. A copy of the company's summary sheet including these changes is attached hereto and marked Exhibit "A."

On July 8, 1915, the Commission's engineering department submitted to the Commission its detailed valuation report of the property of the Glendale and Montrose Railway, as of March 31, 1915, a copy of which was furnished to the company, and a hearing in this case was held September 23, 1915. Previous to this hearing the company had advised the Commission by letter that the values of the physical properties, as ascertained by the engineering department and shown in its report, were accepted. This letter was read into the record, and the case submitted.

1. Organization, Construction and Operation.

The Glendale and Montrose Railway is the successor to the Glendale and Eagle Rock Railway Company. The latter company was organized and incorporated April 14, 1909, with a capital stock of 250 shares at a par value of $100.00, or a total par value of $25,000.00. The company at the same time authorized an issue of first mortgage, 25-year, 6 per cent gold bonds to the amount of $25,000.00.

The Glendale and Eagle Rock Railway Company was organized to construct and operate an electric railroad, and soon after its incorporation the construction of the road was started and the main line from Brand boulevard to Third street in Glendale and the branch line from Glendale to Eagle Rock were completed.

In March, 1910, the main line was extended from Third street to Opechee way, approximately 2½ miles north of Glendale. In March, 1913, the construction was again resumed and the main line completed to Los Angeles avenue in the town of La Crescenta. This gave the road an aggregate mileage of 6.823 miles main line of track and 2.072 miles branch line, or a total of 8.895 miles, all of which lies within Los Angeles County. Commencing in August, 1913, the main line was reconstructed as a broad gauge road. At the same time the overhead construction was rebuilt with longer poles, heavier trolleys, and a substation with a 350-kilowatt motor generator set was erected.

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The road is of cheap construction, and in general poorly maintained, although both the construction and maintenance appear to be commensurate with the operating requirements. The company owns three double truck passenger cars, equipped with air-brakes, and one single passenger car, all used on the standard gauge track and all purchased second-hand. The freight equipment consists of a motor and two flat-cars. The equipment used on the narrow gauge line to Eagle Rock is leased from the Los Angeles Railway Corporation. The power is purchased at Eagle Rock through meters from the Pacific Light and Power Company, and at Montrose substation from the Southern California Edison Company.

The company operates a single passenger car, eighteen round trips each day between Glendale and La Crescenta, and a narrow gauge car leased from the Los Angeles Railway Corporation, fifteen round trips daily between Glendale and Eagle Rock. Freight service depends entirely upon the demand and is rendered only on the broad gauge track between Glendale and La Crescenta.

2. Stocks and Bonds.

This company has outstanding $25,000.00 capital stock and $25,000.00 first mortgage, 25-year, 6 per cent gold bonds. All shares of the capital stock, with the exception of two qualifying directors' shares, are owned by the present president of the company.

The Glendale and Montrose Railway, although successor to the old Glendale and Eagle Rock Railway Company, is not an entirely new company. The bonds of the latter company are still outstanding, although in March, 1914, the name of the corporation was changed to Glendale and Montrose Railway.

The company being unable to meet operating expenses and make the necessary extensions at various times, the president was compelled to advance the necessary cash, and equipment and material were purchased for which notes were given. This resulted in numerous small debts which, as shown by the company's annual report of June 30, 1915, amounted to $107,993.56. No dividends have ever been paid by this company.

3. Revenue and Expenses.

The revenue of this company is derived almost entirely from the passenger traffic between Glendale and Eagle Rock and Glendale and La Crescenta, which, for the year ending June 30, 1915, amounts to 89 per cent of the total operating revenue. This road was built for the purpose of promoting real estate in this community, and, considered as a railroad project, has never been a financial success.

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The revenue and expenses for the year ending June 30, 1915, appear in the company's annual report on file with this Commission, as follows:

Operating Revenue.

	Year ending June 30, 1915.	
Passenger revenue	$16,477 65	
Freight revenue	1,882 12	
Mail revenue	174 97	
Miscellaneous revenue	12 50	
Total operating revenue		$18,547 24

Operating Expenses.

Maintenance of way and structures	$1,119 28	
Maintenance of equipment	1,261 34	
Maintenance of power	9,054 91	
Conducting transportation	9,582 93	
Conducting traffic	258 85	
General and miscellaneous	5,401 58	
Total operating expenses		$26,678 89
Operating deficit		$8,131 65

It will be noted that the result is a net operating deficit of $8,131.65, with an operating ratio of 143.48 per cent. Adding to this loss certain items of taxes, the gross operating loss for the fiscal year ending June 30, 1915, is increased to a total of $9,389.46.

Below are the principal traffic figures for the year ending June 30, 1915, as taken from the company's annual report to this Commission:

Number of passengers carried earning revenue	263,970
Passenger revenue	$16,477.65
Average fare revenue passengers	.06242
Total revenue from transportation	18,534.74
Revenue from transportation per car mile	.12486
Total operating revenue	18,547.24
Operating revenue per car mile	.12495
Total operating expense	26,678.89
Operating expense per car mile	.17973

The financial and operating conditions of this property, as here shown, clearly indicate that the cost or the reproduction cost, or the reproduction cost less depreciation, as found by the Commission's engineering department and shown hereunder, can not possibly be considered as the ultimate or fair value of this railroad for any purpose. These estimates in this instance are merely elements to be taken into consideration by the Commission in any proceeding where the value of the property becomes relevant. It is perhaps well to point out that these figures actually have been put to such use in a security and rate case before the Commission.

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4. Original Cost.

The company in its report showed the total original cost of this road to be $163,927.60. To this total certain items were added, as per the company's letter heretofore referred to, which results in a new total of $176,888.02, as shown in Exhibit "A."

This statement, however, could not be verified, due to the poor condition in which the company's records were found.

The original cost was not ascertained by the engineering department, it being impossible to determine this item in accordance with the definition of that term.

5. Reproduction Cost.

The reproduction cost estimate submitted by the railway company amounted to the sum of $216,578.03, to which certain items were added, as per the company's letter of May 22, 1915, giving a corrected total of $229,915.46 (see Exhibit "A"). The engineering department in its valuation report finds this cost to be the sum of $204,350.54, being a decrease from that of the company's figure of $25,564.92. The reasons for this difference are explained in detail in the report of the engineering department to the Commission, to which reference is hereby made. The engineering department also found the reproduction cost of this company's nonoperative property to be the sum of $1,625.11, or a total for both operative and nonoperative property of $205,975.65, as shown in Exhibit "B."

As hereinbefore stated, the company made no objection to the reproduction cost as determined by the Commission's engineering department.

In the *Minnesota Rate Case*, 230 U. S. 352, the Supreme Court of the United States has dealt with the question of land values, and Justice Hughes, on page 455, expresses the unanimous view of the court as follows:

> "Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, can not properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right of way, yards and terminals upon the so-called 'railway value' of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise to cover hypothetical outlays. The allowances made below for a conjectural cost

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of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of 'engineering, superintendence, legal expenses,' 'contingencies' and 'interest during construction.' ''

This language of the Supreme Court clearly rejects the so-called multiple theory, and it is not considered necessary to enter into a further discussion of the valuation principles involved. This Commission is making findings of certain facts and elements entering into the value of this property, and it is sufficient to say that in the estimate of the reproduction cost of this railway, the rights of way and other lands used in electric railway operations, are valued in accordance with the definition shown hereinbefore and on the basis of the present market value of adjoining and similar lands, without any arbitrary additions of multiples or other allowances.

I find, therefore, that the reproduction cost, as that term has hereinbefore been defined, of the operative property of the Glendale and Montrose Railway, as of March 31, 1915, is the sum of $204,350.54, and the reproduction cost of the nonoperative property is the sum of $1,625.11, resulting in a total for both operative and nonoperative properties of $205,975.65.

6. Reproduction Cost Less Depreciation.

Reproduction cost less depreciation, as reported by the company, amounted to the sum of $220,565.60. Certain additions were made by the engineering department, as per the company's letter of May 22, 1915, resulting in a corrected total for the reproduction cost less depreciation of $235,435.68, as shown by Exhibit "A." The same item, as ascertained by the engineering department in its valuation report to the Commission, amounted to the sum of $189,408.63, being a decrease from that of the company's figure of $46,027.05. The reason for this difference is explained in detail in the report of the Commission's engineering department, to which reference is hereby made. The department also found the reproduction cost less depreciation of the company's nonoperative property to be the sum of $1,592.98, or a total for both operative and nonoperative property of $191,001.61, as shown in Exhibit "B."

What has been said under the heading "reproduction cost" regarding the value of lands also applies to the reproduction cost less depreciation, and the amounts determined for these items under the heading "reproduction cost" are allowed for the reproduction cost less depreciation. As before stated, land values are now based upon the present

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market value of adjoining and similar lands and eliminate all additional arbitrary percentage allowances.

I find, therefore, that the reproduction cost less depreciation, as that term has hereinbefore been defined, of the operative property of the Glendale and Montrose Railway, as of March 31, 1915, is the sum of $189,408.63, and the reproduction cost less depreciation of the nonoperative property amounts to $1,592.98, resulting in a total for both operative and nonoperative property of $191,001.61.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 4th day of December, 1915.

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EXHIBIT "A."

Owning company, Glendale and Montrose Railway; operating company, same; operating division, entire line; valuation unit, entire line; from Glendale to La Crescenta and Eagle Rock, Los Angeles County.

Submitted with report of company.

Class No.	Form. No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
40	----	1	Engineering	$15,961 50	$52,814 00	128	$67,294 00
1	1	2	Right of way				
2	2	3	Other land used in electric railway operations	1,800 00	2,070 00	145	3,000 00
3	3	4	Grading	12,451 67	12,451 67	112	13,984 32
4	4	5	Ballast				
5	5	6	Ties	13,941 50	15,437 60	88	13,569 55
6	6	7	Rails	28,833 38	28,833 38	93	26,940 18
7	7	7	Track fastenings and joints	6,094 87	6,094 87	99	6,013 97
8	8	8	Special work	1,177 01	1,292 00	96	1,240 66
9	9	8	Frogs and switches	1,172 24	1,172 24	98	1,150 15
10	10	9	Underground construction				
11	11	10	Paving	3,240 40	3,287 61	100	3,287 61
12	12	11	Tracklaying and surfacing	37,003 60	37,003 60	100	37,003 60
13	13	12	Roadway tools	380 65	380 65	94	358 20
14	14	13	Tunnels				
15	----	14	Elevated structures and foundations				
16	15	15	Steel bridges and trusses				
17	16	15	Pile and frame trestles	5,301 10	5,301 10	95	5,058 50
18	17	15	Culverts	508 05	508 05	100	508 05
19	18	16	Fences and cattle guards				
20	19	16	Crossings and signs	45 10	45 10	94	42 50
21	20	17	Interlocking plants				
22	21	17	Signal apparatus				
23	22	18	Telegraph and telephone lines				
24	23	19	Poles and fixtures	8,921 71	8,921 71	93	8,270 51
25	24	20	Underground conduits				
26	25	21	Transmission system				
27	26	22	Distribution system	14,058 10	14,857 24	97	14,387 82
28	27	23	Dams, canals and pipe lines				
29	28	24	Power plant buildings				
30	29	25	Substation buildings	1,037 00	1,500 00	83	1,250 00
31	30	26	General office buildings				
32	31	27	Shops and car houses				
33	32	28	Stations and waiting rooms	471 00	471 00	100	471 00
34	33	28	Miscellaneous buildings	210 00	250 00	84	210 00
35	34	29	Docks and wharves				
36	35	30	Power plant equipment	8,150 00	13,203 00	83	11,008 00
37	36	31	Substation equipment				
38	37	32	Shop equipment				
39	38	33	Park and resort property	790 43	872 93	93	813 00
41	----	34	Cost of road purchased				
42	----	42	Injuries and damages				
43	39	35	Cars	6,000 00	10,500 00	75	7,875 00
44	40	35	Freight train cars	450 00	1,600 00	50	800 00
45	41	36	Steam locomotives				
46	42	36	Electric locomotives	500 00	1,500 00	67	1,000 00
47	43	37	Electric equipment of cars				
48	44	38	Other rail equipment	185 00	500 00	70	350 00
49	45	39	Miscellaneous equipment				
51	46	43	Taxes	145 29	145 29	100	145 29
52	46	44	Miscellaneous	567 90	803 90	85	680 25
53	----	41	Interest	1,357 49	1,357 49	100	1,357 49
55	47	----	Stores and supplies on hand for use in California	6,113 03	6,741 03	100	6,741 03
			Grand total	$176,888 02	$229,915 46	102	$235,435 68
			Average per mile for main track	21,332 00	27,727 00	-------	28,393 00
			Total, "road," I.C.C. Accounts 1-34 (inc.)	161,569 31	206,767 75	105	216,486 62
			Total, "equipment," I.C.C. Accounts 35-39 (inc.)	7,135 00	14,100 00	71	10,025 00
			Total, "general," I.C.C. Accounts 40-44 (inc.)	2,070 68	2,306 68	95	2,183 06
			Total, operative and nonoperative properties	176,888 02	229,915 46	102	235,435 68

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EXHIBIT "B."

Owning company, Glendale and Montrose Railway; operating company, same; operating division, entire line; valuation unit, entire line; from Glendale to La Crescenta and Eagle Rock, Los Angeles County.

Submitted with report of H. G. Weeks, assistant engineer; date compiled, May 10, 1915; main line first track, 6.22 miles; branch line first track, 2.072 miles; yard tracks, sidings, etc., .603 miles; total, 8.895 miles. Valuation as of March 31, 1915.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
40	----	1	Engineering		$5,804 00	100	$5,804 00
1	1	2	Right of way		51,067 00	100	51,067 00
2	2	3	Other land used in electric railway operations		1,800 00	100	1,800 00
3	3	4	Grading		14,212 00	102	14,464 00
4	4	5	Ballast		2,126 00	100	2,126 00
5	5	6	Ties		13,380 00	70	9,402 00
6	6	7	Rails		27,315 00	84	23,061 00
7	7	7	Track fastenings and joints		3,320 00	75	2,479 00
8	8	8	Special work		1,590 00	91	1,443 00
9	9	8	Frogs and switches		947 00	90	853 00
10	10	9	Underground construction				
11	11	10	Paving		3,286 00	95	3,122 00
12	12	11	Tracklaying and surfacing		11,341 00	81	9,186 00
13	13	12	Roadway tools		424 86	95	403 62
14	14	13	Tunnels				
15	----	14	Elevated structures and foundations				
16	15	15	Steel bridges and trusses				
17	16	15	Pile and frame trestles		1,106 00	94	1,033 00
18	17	15	Culverts		1,783 00	98	1,737 00
19	18	16	Fences and cattle guards				
20	19	16	Crossings and signs		29 00	86	25 00
21	20	17	Interlocking plants				
22	21	17	Signal apparatus				
23	22	18	Telegraph and telephone lines				
24	23	19	Poles and fixtures		10,881 00	88	9,599 00
25	24	20	Underground conduits				
26	25	21	Transmission system				
27	26	22	Distribution system		13,847 00	93	12,865 00
28	27	23	Dams, canals and pipe lines				
29	28	24	Power plant buildings				
30	29	25	Substation buildings		1,366 53	94	1,284 54
31	30	26	General office buildings		366 85	98	358 22
32	31	27	Shops and car houses				
33	32	28	Stations and waiting rooms		585 25	87	552 72
34	33	28	Miscellaneous buildings		231 43	95	219 86
35	34	29	Docks and wharves				
36	35	30	Power plant equipment				
37	36	31	Substation equipment		7,948 87	96	7,630 92
38	37	32	Shop equipment				
39	38	33	Park and resort property				
41	----	34	Cost of road purchased				
42	----	42	Injuries and damages		669 00	100	669 00
43	39	35	Cars		5,308 00	96	5,089 00
44	40	35	Freight train cars		960 00	95	912 00
45	41	36	Steam locomotives				
46	42	36	Electric locomotives		2,525 00	90	2,273 00
47	43	37	Electric equipment of cars		2,052 00	96	2,916 00
48	44	38	Other rail equipment		75 75	100	75 75
49	45	39	Miscellaneous equipment				
50	----	40	Law expenses		1,161 00	100	1,161 00
51	46	43	Taxes		640 00	100	640 00
52	46	44	Miscellaneous		2,726 00	100	2,726 00
53	----	41	Interest		4,865 00	100	4,865 00
55	47	----	Stores and supplies on hand for use in California		7,616 00	100	7,616 00
			Grand total		$204,350 54	94	$189,408 63
			Average per mile for main track		24,644 21	94	22,842 33
			Total, "road," I.C.C. Accounts 1-34 (inc.)		174,757 79	93	160,515 88
			Total, "equipment," I.C.C. Accounts 35-39 (inc.)		11,915 75	94	11,215 75
			Total, "general," I.C.C. Accounts 40-44 (inc.)		10,061 00	100	10,061 00
			Total nonoperative property (not included in above totals)		1,625 11	98	1,592 98
			Grand total, operative and nonoperative properties		205,975 65	94	191,001 61

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DECISION No. 2958.

IN THE MATTER OF THE APPLICATION OF MOUNTAIN LIGHT AND WATER COMPANY AND BROOKDALE LAND COMPANY TO TRANSFER CERTAIN PROPERTY.

Application No. 1940.

Decided December 4, 1915.

Brookdale Land Company authorized to transfer its electric light plant and water system located at Brookdale, Santa Cruz County, to the Mountain Light and Water Company, and the latter company is authorized to issue $25,000.00 par value of its stock and $23,500.00 face value of bonds and to execute a mortgage securing same. Of the stock, $14,300.00 par value to be issued to Brookdale Land Company, $1,600.00 to J. F. Hughes, $9,100.00 to be sold at par; of the bonds, $20,500.00 to be issued to the Brookdale Land Company, and $3,000.00 sold for cash, proceeds of stock and bonds to be used to pay off two certain notes of the aggregate face value of $9,600.00, the balance to be used for additions and betterments.

J. C. Hughes and *H. L. Breed*, for Mountain Light and Water Company.

J. H. Logan, for Brookdale Land Company.

REPORT OF THE COMMISSION.

In this application Brookdale Land Company asks authority to sell its electric light and water plant at Brookdale, Santa Cruz County, to Mountain Light and Water Company. The latter company asks authority to issue, for purposes hereinafter indicated, $25,000.00 par value of its capital stock; to issue $23,500.00 face value of its bonds; to execute a mortgage securing the payment of said bonds, and to convey certain real estate, consisting of residence lots which are not necessary to or constitute a portion of the public utility water plant operated by it at Ben Lomond, in settlement of certain claims against the company.

By Decision No. 2328, dated April 24, 1915, Mountain Light and Water Company was authorized to acquire from F. A. Cody the water utility operated under the name of Ben Lomond Waterworks.

Mountain Light and Water Company reports that it has canceled 247 shares of its capital stock, as required by said Decision No. 2328, and has issued in lieu thereof 10 shares of stock, the issuance of which has been authorized by this Commission.

Mountain Light and Water Company has requested that the Commission consider the application herein, and the various exhibits attached thereto, as complying with all the conditions imposed upon applicant

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in said Decision No. 2328. This applies in particular to the issuance of notes to H. Currie in the sum of $5,000.00 and the execution of a mortgage or deed of trust securing the payment of the same. Additional evidence submitted shows that the notes to H. Currie, aggregating $5,000.00, were issued for a period of one year, said notes being secured by a mortgage covering all of the property. Inasmuch as the mortgage was executed without the consent of the Commission, it is void and the notes stand as an unsecured obligation of the company.

Mountain Light and Water Company asks that it be permitted to use part of the proceeds to be obtained from the sale of its stock and bonds to pay the $5,000.00 due on notes executed to H. Currie and indorsed by him to E. W. Knapp.

In Decision No. 1559, dated June 2, 1914, this Commission found the value of the water system owned by F. A. Cody, for rate-fixing purposes, to be $8,022.00. In Decision No. 2606, dated June 16, 1915, this Commission found the value of the water plant owned by Brookdale Land Company, for rate-fixing purposes, to be $18,997.00.

According to the Railroad Commission's Exhibit No. 1, filed in connection with this application, and which contains an appraisal of the electric light plant of Brookdale Land Company, the present value of said plant amounts to $25,541.00. The value of the electric light plant, as reported, includes properties valued at $3,042.00, which sum was included in the appraisal of the water plant of Brookdale Land Company by this Commission in its former decision. To summarize: The value of the property of Mountain Light and Water Company, as found by and reported to this Commission, assuming this application be granted, amounts to $49,518.00. In addition to this, the company proposes to make improvements estimated to cost $2,500.00.

As stated heretofore, Mountain Light and Water Company asks authority to issue $25,000.00 par value of stock and $23,500.00 face value of bonds. The stock is to be issued for purposes as follows:

Cash	$9,100
As part payment for the property to be acquired from Brookdale Land Company	14,300
To J. F. Hughes for property conveyed by her in settlement of claims against Mountain Light and Water Company	1,600
Total	$25,000

The 10 shares of stock now outstanding are to be canceled.

To satisfy any equities or claims which the present stockholders or A. F. Hewlitt and G. L. Stillwell may have in or against Mountain Light and Water Company, it is proposed to transfer to the parties in interest certain residence lots located at Ben Lomond, valued at $2,500.00, which are not necessary to or constitute any portion of the

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public utility water plant operated by the company at Ben Lomond. The company has also made arrangements to cause to be transferred to H. L. Breed, in payment for any claims which he may have against the company, a lot located in Berkeley, Alameda County, valued at $1,600.00. This lot is now owned by J. F. Hughes and upon its transfer to said H. L. Breed, stock in the amount of $1,600.00 is to be issued to the transferrer. Inasmuch as neither of these properties are necessary or useful in the performance of the utility's duties to the public the permission of the Commission is unnecessary to the transfer.

The bonds of the Mountain Light and Water Company are to be issued for the following purposes:

For cash	$3,000
For part payment of property to be acquired from Brookdale Land Company	20,500
Total	$23,500

Payment of the bonds is to be secured by a deed of trust executed to T. J. McCreary and A. F. Foster, trustees. A copy of the proposed deed of trust is attached to this application and marked Exhibit "G." Bonds shall be of the denomination of $500.00 each. Six of the bonds, numbered 1 to 6, inclusive ($3,000.00), shall mature January 2, 1917, and the remainder of the bonds, numbered 7 to 47, inclusive ($20,500.00), shall mature Jnauary 2, 1926, unless sooner called for redemption. Bonds are to bear interest at the rate of 6 per cent, payable quarterly.

The company agrees that on January 2, 1921, and annually thereafter until the bonds are redeemed, it will deposit with the trustee $500.00 for the purpose of creating a sinking fund, said payments to be used for the redemption of bonds of this issue.

As stated above, $3,000.00 face value of bonds mature January 2, 1917. Mr. J. C. Hughes testified that if the earnings of the company will not be sufficient to pay these bonds, an assessment will be levied upon the stockholders to make up any deficiency. He also stated that under no circumstances would the company permit a default in the payment of the bonds maturing January 2, 1917.

Mountain Light and Water Company proposes to sell its stock and bonds at par. From the sale thereof, it will acquire the electric light and water plant of Brookdale Land Company, and cash in the sum of $12,100.00. Of the cash thus obtained, $2,500.00 is to be used to pay the cost of extensions, improvements to its plant, and $9,600.00 to pay all of its outstanding notes. The notes are held by the following persons:

E. W. Knapp	$7,900
J. F. Hughes	1,700
Total	$9,600

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The notes held by E. W. Knapp include notes in the sum of $5,000.00 originally issued to H. Currie and referred to in this Commission's Decision No. 2328, dated April 24, 1915.

In this Commission's Exhibit No. 1, the operating revenues and expenses for the year 1914 are reported as follows:

	Gross revenues	Expenses	Net revenues
Mountain Light and Water Company	$1,003 13	$783 41	$219 72
Brookdale Land Company	2,297 76	1,405 80	819 96
Totals	$3,300 89	$2,189 21	$1,111 68

These figures represent the actual earnings and expenses as near as the same can be ascertained. No allowance is made for the increase in earnings supposed to follow the rate adjustment by this Commission in Decision No. 2609, dated July 16, 1915.

Applicant estimates that its earnings for 1915, basing its figures on the rates established by this Commission, will amount to $5,500.00. The interest on its bonds will amount to $1,400.00, leaving a sum of $4,100.00 to be applied to operating expenses, extensions, additions and betterments. The testimony shows that by the consolidation of the utilities heretofore mentioned, economies can be introduced in the matter of the operation of the plants, and greater efficiency obtained. Representatives of the applicants are convinced that the earnings for 1915 will be more than adequate to pay the operating expenses and the interest on the proposed bond issue.

ORDER.

Mountain Light and Water Company and Brookdale Land Company having applied to this Commission for an order authorizing Brookdale Land Company to sell its water and electric plant to Mountain Light and Water Company; also for an order authorizing Mountain Light and Water Company to transfer and sell certain property not necessary to or useful in the operation of its public utility business; to issue stocks and bonds, and to execute a mortgage or deed of trust as stated in the foregoing opinion, and a public hearing having been held and the Commission finding that public convenience and necessity will be served by granting the application herein, and that the purposes for which said company desires to issue its stock and bonds are not in whole or in part reasonably chargeable to operating expenses or to income, and it appearing to the Commission that the application should be granted,

It is hereby ordered that Brookdale Land Company be given and it is hereby given authority to transfer and sell its water and electric light plant, more particularly described in Exhibits "B" and "F," attached to this application, to Mountain Light and Water Company.

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It is hereby further ordered that Brookdale Land Company be given and it is hereby given authority to transfer and sell its water and electric light plant situated in the county of Santa Cruz, State of California, and particularly described as follows, to wit:

First. (*a*) All property of whatsoever kind or character, wheresoever situate, in any manner used by, connected with, or belonging (either directly, indirectly or incidentally) to the water plant situated at and near the town of Brookdale, Santa Cruz County, California, and which includes among other things, all springs and waters, including all underground waters, flowing or otherwise, on, over or under any lands situate in sections 31 and 32 in township 9 south, range 2 west, M. D. B. and M.; also all water rights or privileges in or to Clear Creek and the San Lorenzo River, or the waters therein or in any of the branches or tributaries of said Clear Creek or said river, or in or to the waters therein, where said creek or river or branches are located in said sections 31 or 32 aforesaid, except the rights in said San Lorenzo River heretofore conveyed by said first party, or its predecessors in interest, to A. H. Breed.

(*b*) Also, all rights of way and easements belonging to first party or utilized by it for flumes, flume-lines, pipes, pipe-lines, reservoirs, spillways for reservoirs and overflows of waters therefrom, and other spillways for other flows from any portion of said water system; also for roads, trails, streets, alleys and for all purposes in any manner necessary, required or convenient for the reasonable maintenance, operation, extension, improvement or repair of the water or light plants herein agreed to be conveyed; also all necessary rights of ingress and egress to, from or over private properties in which said first party may now own, or may hereafter acquire any right, title or interest, or otherwise.

(*c*) Also, all reservoirs, flumes, dams, flume-lines, intakes, pipes, pipe-lines, mains, laterals, service-pipes, spillways, drains, tools, implements, meters, machinery of every kind and character, waterwheels, lumber and other materials of every kind and character owned by said first party, and now or heretofore used, or intended for the use, of said water plant, or connected therewith.

Second. All property of whatsoever kind or character, wheresoever situate, in any manner used by, connected with or belonging (either directly, indirectly or incidentally) to the electric light plant situate at and near the town of Brookdale, aforesaid, and which property includes, among other things, all waters, water rights or privileges, or other rights and privileges, in and to the said Clear Creek and the San Lorenzo River, and the branches and tributaries thereof, and the waters therein, as set forth and described in subdivision (*a*) of paragraph marked "*First*" herein.

Also, all rights of way and easements as set forth and described in subdivision (*b*) of the paragraph marked "*First*" herein, and in addition thereto the same rights of way and easements for the wires, poles, pole-lines, and for all other purposes in any manner connected with the maintenance, operation, extension, improvement and repair of said electric light plant, or any portion thereof, so far as can be done.

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Also, all reservoirs, etc., as set forth in subdivision (*c*) of said paragraph marked "*First*" herein, in any manner connected with said electric light plant, or the operation thereof, and in addition thereto, all generators, dynamos, motors, exciters, switches, switchboards, meters, wires, poles, pole-lines, insulators, and all other machinery, tools, implements and materials in any manner connected with said electric light plant, wheresoever situate.

Third. A perpetual right of way to lay pipes on, over or under the surface, or to construct or erect poles and pole-lines, transformers, wires and any other equipment, over and across, any and all streets, roads, walks, trails, or alleys of said town of Brookdale, or on, over or across or under any property owned or possessed by said first party, or which it may hereafter acquire, in or near said town of Brookdale, and which may be deemed necessary, economical or convenient for the maintenance, operation, extension, improvement or repair of said water or light plants, or any portion thereof.

Fourth. All of lot 11, block F, as the same is so marked and designated on the Map of Brookdale, Santa Cruz County, California, printed by the Union Lithograph Company of San Francisco, California, together with all improvements thereon; including also the mill-plant thereon, with all machinery and every other machinery of whatsoever kind or character, whether connected with said water and electric light plants or not; including all saws, tools, implements, belting, shafting, pulleys, iron, lumber, and all other equipment and materials of every kind and character on said premises or belonging thereto or connected therewith, wheresoever situate.

Fifth. The following described tract of land: Commencing at the point of intersection of the easterly line of Reed street in said town of Brookdale, with the southerly line of the Southern Pacific Railroad right of way, which said Reed street shall be extended to said right of way by said first party, and running thence southerly along said easterly line of said Reed street a distance of eighty (80) feet; thence running easterly along a line parallel with said line of said right of way a distance of one hundred and fifty (150) feet; thence running northerly along a line parallel with said easterly line of said Reed street a distance of eighty (80) feet to said line of said right of way; thence running westerly along said line of said right of way a distance of one hundred and fifty (150) feet to the point of commencement.

Sixth. A tract of land along the bed and banks of said San Lorenzo River, as said river is described in said paragraph marked "*First*" herein, including all of said bed and banks not heretofore conveyed by said first party, including the right to erect and construct a dam or dams across said river at one or more points for manufacturing, power, commercial, or pleasure purposes, and to thereby raise the waters flowing in said river to such height as shall be necessary for all of said bed and banks not heretofore conveyed by said first party, including the right to erect and construct a dam or dams across said river at one or more points for manufacturing, power, commercial or pleasure purposes, and to thereby raise the water flowing in said river to such height as

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shall be necessary for either or all of such purposes; together with an additional tract of land adjoining said river and lying between the point where said Clear Creek empties into said river and the railroad bridge which crosses said river a short distance westerly from said Clear Creek, as said second party may require for the use and occupation of suitable and proper bathhouses, boathouses, power houses, or other necessary buildings; also a proper and suitable right of way to said houses; said tract of land to be selected by said second party within one year after the date of the filing of the decision of the said Railroad Commission approving this agreement and the sale herein agreed to be made; but nothing in this agreement shall be construed to grant any such property, rights or privileges which said first party shall have no right to grant. The additional tract shall include all land owned by first party on north side of San Lorenzo River lying west of a line drawn due north from the northwest corner of lot marked "Mrs. Emma Jenkins," now owned by Mrs. Judkins.

Seventh. Two tracts of land, consisting of one-half acre each, adjoining the present sites of the two reservoirs now being used by said electric light plant and connected with the two power mains of said plant; said two tracts of one-half acre each to be selected by said second party within one year after the delivery of the conveyance by first party to second party of the plants of first party.

Eighth. Two rights of way, each ten feet in width, along the two power mains of said electric light plant running from said plant on said lot 11, block F, above described in paragraph marked *"Fourth"* herein, to the two reservoirs described in paragraph marked *"Seventh"* herein, being five feet on each side of the center line of each of said power mains; also, two rights of way, each thirty feet in width, running from said reservoirs described in said paragraph marked *"Seventh"* herein, along the flume-lines connected with each of said reservoirs, respectively, to the respective intakes connected with said flume-lines; also, any additional land on either side of said rights of way, or any other rights of way granted in this instrument, necessary or proper to be used at any time to maintain proper and convenient slopes to any road, work, improvement or development or use of any or either of said rights of way. The first party reserves the right to construct roads across said rights of way in such manner as not to interfere with said pipes and flumes.

Ninth. All that certain tract of land known and designated as John Dubuis Subdivision No. 1, consisting of six hundred fifty-one and nine hundred fifteen thousandths (651.915) acres, situated in section 36, township 9 south, range 3 west and in section 31, township 9 south, range 2 west, M. D. B. and M., transferred to T. G. McCreary as trustee for said John Dubuis by said first party, excepting from said 651.915 acres those portions lying west and north of lands of J. N. Walter and the John Dubuis Subdivision No. 2, consisting of 29.491 acres, and a line drawn parallel with and forty feet southeasterly from the southeasterly bank of the Sweet Water branch of Clear Creek, and south of the south side

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of the wagon road running along the south side of said Clear Creek; which tract of land consists of 600 acres, or thereabouts, being a portion of the Bloom tract.

It is hereby further ordered that Mountain Light and Water Company be given and it is hereby given authority to issue $25,000.00 par value of stock.

It is hereby further ordered that Mountain Light and Water Company be given and it is hereby given authority to issue $23,500.00 face value of bonds.

It is hereby further ordered that Mountain Light and Water Company be given authority and it is hereby given authority to execute a mortgage or deed of trust in substantially the same form and tenor as the mortgage or deed of trust marked Exhibit "G" and attached to this application.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The stock herein authorized to be issued shall be issued for not less than the par value thereof, and for the following purposes:

(*a*) To Brookdale Land Company for part payment of property to be acquired from said Brookdale Land Company	$14,300
(*b*) To J. F. Hughes for property which she has agreed to convey to creditors of Mountain Light and Water Company	1,600
(*c*) To be sold for cash	9,100

(2) The bonds herein authorized to be issued shall be issued so as to net applicant not less than the face value thereof, and for the following purposes:

(*a*) To Brookdale Land Company for part payment of property to be acquired from said Brookdale Land Company	$20,500
(*b*) To be issued for cash	3,000
Total	$23,500

(3) The cash to be obtained from the sale of stock and bonds authorized to be issued shall be used for the following purposes:

(*a*) To pay notes held by E. W. Knapp	$7,900
(*b*) To pay note held by J. F. Hughes	1,700
(*c*) To pay for extensions, additions and betterments, estimated to cost	2,500
Total	$12,100

(4) The purchase price herein authorized to be paid for property to be acquired from Brookdale Land Company shall not be binding upon this Commission or any other rate-fixing body for rate-fixing purposes, or otherwise.

(5) Within thirty days from and after the date of this order, Mountain Light and Water Company shall file with this Commission a

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stipulation signed by H. L. Breed, as trustee for A. F. Hewlett and G. L. Stillwell and stockholders of Mountain Light and Water Company, who do not hold notes against the company, that they will cancel all their claims against the company upon the transfer of the property herein authorized to be transferred to said H. L. Breed, as trustee for A. F. Hewlett and G. L. Stillwell and stockholders of Mountain Light and Water Company.

(6) The approval herein given of said mortgage is for the purpose of this proceeding only, and as an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to any other legal requirements to which said mortgage may be subject.

(7) Mountain Light and Water Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the stock and bonds hereby authorized to be issued; and on or before the twenty-fifth day of each month the company shall make verified reports to this Commission, stating the sale or sales of said stock and bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

(8) The authority herein granted is conditioned upon the payment by applicant of the fee prescribed in the Public Utilities Act, as amended.

(9) The authority herein granted for the transfer of property, issue of stock, bonds and notes, and execution of mortgages, shall apply only to such transfer of property, issue of stock, bonds and notes, and execution of mortgages as shall have taken place on or before the first day of May, 1916.

Dated at San Francisco, California, this 4th day of December, 1915.

DECISION No. 2959.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF SAN FRANCISCO, NAPA AND CALISTOGA RAILWAY.

Case No. 322.

Decided December 7, 1915.

Investigation upon the Commission's own motion into the various elements entering into the value of respondent's property. General review made of respondent's history, financial and operating conditions and the following conclusions reached:

Findings of fact: That the reproduction cost of the operative physical property of

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respondent as of June 30, 1914, is the sum of $1,212,179.73, including nonoperative property, $1,222,976.73; that the reproduction cost less depreciation or present value of the operative physical property of respondent as of June 30, 1914, is the sum of $1,000,049.19, including nonoperative property, $1,010,846.19.

Chaffee Hall, for San Francisco, Napa and Calistoga Railway.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

This proceeding was brought on the Railroad Commission's initiative for the purpose of ascertaining the various elements entering into the value of the property of the San Francisco, Napa and Calistoga Railway. This property is located in Solano and Napa counties, California. For the general procedure in these valuation cases and for a general description of the work performed by the Commission's engineering department, reference is hereby made to the Commission's opinion and findings in Case No. 206, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company, and Case No. 210, being the matter of ascertaining the value of the property of the Tonopah and Tidewater Railroad Company.

These valuations were begun under section 20 of the Stetson-Eshleman Act, effective February 10, 1911, and continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to this proceeding are sections 47 and 70. As is usual in these valuation cases, I shall confine myself to making findings of fact on specified elements bearing on the question of the value of this company's property, as shown by the evidence in this case, and shall not make a finding on the question of the ultimate value of the property, irrespective of the purpose for which the value is ascertained.

As usual, I shall, in connection with this inquiry, consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction cost, as defined.
6. Reproduction cost less depreciation, as defined.

I shall first define the three elements of value which I propose to find:

The term "original cost" means the original book cost, and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's classification for electric railways, in cash or its equivalent in terms of

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cash, by the public utility for its operative property in the State of California, as of the date of the valuation.

The term "reproduction cost" means the estimated cost in cash of reproducing, in the condition (new or second-hand) in which it was acquired, the physical property of the public utility in the State of California, as of the date of the valuation; to which is added the value of all operative lands, based on the market value of adjacent and similar lands, the actual or estimated cost of acquiring franchises and the estimated cost of overhead expenditures for engineering, law, interest, and other similar items.

The term "reproduction cost less depreciation," means the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, inadequacy, or other causes, this diminution being called depreciation, and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called appreciation.

In accordance with this Commission's order dated October 17, 1912, the San Francisco, Napa and Calistoga Railway on October 6, 1913, filed an inventory of its property, together with a statement of original cost and an estimate of its reproduction cost and reproduction cost less depreciation, as of June 30, 1913. A copy of the company's final summary sheet is attached hereto and marked "Exhibit A." To the totals as reported by the company, the engineering department added certain additions and betterment charges, resulting in approximate totals for these same values as of June 30, 1914. A copy of the summary sheet, including the addition and betterment charges, is attached hereto and marked "Exhibit B."

On June 8, 1915, the Commission's engineering department submitted to the Commission its detailed valuation report as of June 30, 1914, a copy of which was furnished to the company.

A hearing was held in this case on September 8, 1915, at which time the company was represented. The company thereafter submitted further evidence bearing upon the financial history of the San Francisco, Vallejo and Napa Valley Railroad Company, which company was superseded by the present company, and the case was continued to September 25, 1915, and submitted at that time. The company accepted the valuation report as submitted by the engineering department in so far as reproduction cost and reproduction cost less depreciation are concerned. Certain statements relative to the amount of the company's bonded indebtedness, as shown in the engineering department's report, were, however, submitted to the Commission, and this item is hereinafter considered in detail under the heading "Stocks and Bonds."

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1. Organization, Construction and Operation.

The San Francisco, Napa and Calistoga Railway was incorporated November 10, 1911, to construct and operate a standard gauge electric railroad and to carry on an express business in connection with the boats between San Francisco and Vallejo and the railroad between Vallejo and Calistoga. This company is the successor of two previous companies, namely, the Vallejo, Benicia and Napa Valley Railroad Company and the San Francisco, Vallejo and Napa Valley Railroad Company.

The first of the last mentioned two companies was organized to build and operate an electric road between Vallejo and Benicia. This proposed route was later changed from Vallejo to Napa, a distance of 15.403 miles. This line was constructed and placed in operation in 1904. All traffic between Vallejo and San Francisco was handled under a five-year agreement with the Monticello Steamship Company, whereby the steamship company was to receive 25 cents on all through passengers and one-half of the through rate on all express and freight. The San Francisco, Vallejo and Napa Valley Railroad Company in 1906 organized and started the construction of a road between Napa and St. Helena, a distance of 18.437 miles. This was also an electric line and completed and placed in operation in 1907. In November, 1911, as stated above, the present company was organized and took over the two older companies, and also commenced construction of the road from St. Helena to Calistoga, a distance of 7.756 miles. This last section of the road was completed and placed in operation in 1912.

By the consolidation of the three units the San Francisco, Napa and Calistoga Railway extends from Vallejo, where steamship connection with San Francisco is maintained, to Calistoga, with an aggregate milege of 41.596 miles main line, and 2.926 miles of sidings and spurs, of which 4.554 miles lie in Solano County and 39.968 miles in Napa County. The road traverses Napa Valley, which is noted for its fertility and high agricultural development. The greater portion of this line parallels the Southern Pacific Company's branch line, which also has Calistoga as a terminus. The standards of construction used in this road compare favorably with other interurban electric railroads in the State, and the roadbed and equipment are well maintained.

The San Francisco, Napa and Calistoga Railway operates seven northbound and seven southbound passenger trains daily between Vallejo and Calistoga. Three trains are operated daily between Vallejo and Napa and three trains each way through the town of Napa, to complete the local service and comply with franchise requirements. Freight service consists of one train daily each way between Vallejo and Calistoga, and one train each way between Vallejo and Napa. As heretofore stated, the company conducts a joint passenger, freight and express

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business between Vallejo and San Francisco with the Monticello Steamship Company. The railway company also sells through tickets to points reached by various stage lines in this territory.

2. Stocks and Bonds.

The company's articles of incorporation authorized capital stock of 20,000 shares at a par value of $100.00, representing a total par value of $2,000,000.00. Of this amount $713,700.00 are outstanding, as shown by the annual report of this company for June 30, 1914.

Shortly after the organization and incorporation of the San Francisco, Napa and Calistoga Railway, the directors agreed to purchase the stock and assume the bonds of the San Francisco, Vallejo and Napa Valley Railroad Company. This company had been unable to meet its interest payment and had been purchased at a forced sale by the special reorganization committee of the depositing bondholders of the San Francisco, Vallejo and Napa Valley Railroad Company. For this purpose the present company authorized an issue of bonds to the amount of $1,610,000.00, of which $1,000,000.00 were 25-year 6 per cent gold bonds secured by a trust debenture of all property acquired or to be acquired, and $610,000.00 25-year 5 per cent unsecured debenture bonds. Of this issue, $1,210,000.00 are outstanding at the present time, and have been used as follows: $1,060,000.00 to acquire the holdings of the San Francisco, Vallejo and Napa Valley Railroad Company and $150,000.00 for the construction of the road from St. Helena to Calistoga.

The Vallejo, Benicia and Napa Valley Railroad Company was incorporated on April 22, 1902, with a capital stock of 5,000 shares with a par value of $100.00 per share, representing a total of $500,000.00 and a bonded indebtedness of $500,000.00 secured by a first mortgage. This company, as heretofore stated, built and operated an electric railroad between Vallejo and Napa with steamship connections to San Francisco and Vallejo.

In July, 1906, the San Francisco, Vallejo and Napa Valley Railroad Company was incorporated with a capital stock of $1,500,000.00, and authorized an issue of first mortgage bonds to the amount of $1,500,000.00. This company completed, and in 1907 started, the operation of the road between Napa and St. Helena.

By this time the Vallejo, Benicia and Napa Valley Railroad Company proved to be unsuccessful from a financial standpoint and besides being unable to meet its interest payment had been compelled to make numerous loans to cover operating expenses. Fifty thousand dollars of this floating indebtedness was taken over by the San Francisco,

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Vallejo and Napa Valley Railroad Company in exchange for certain franchises, tracks, and rights of way through the northern part of the town of Napa.

In April, 1907, an agreement was reached whereby the bonds and stock of the San Francisco, Vallejo and Napa Valley Railroad Company were offered in exchange at par for the bonds and stock of the Vallejo, Benicia and Napa Valley Railroad Company. In June, 1909, the former company had acquired, through the medium of exchange of the new bonds, 479 of the bonds of the latter company, which were placed in the treasury of the San Francisco, Vallejo and Napa Valley Railroad Company. The bonded indebtedness of the San Francisco, Vallejo and Napa Valley Railroad Company, as shown by that company's annual report for 1911, and the valuation report of the engineering department, was $1,500,000.00. This statement, as heretofore mentioned, was attacked by the company, which, at the hearing held September 25, 1915, introduced evidence showing that the old bonds of the Vallejo, Benicia and Napa Valley Railroad Company, which had been exchanged for bonds of the San Francisco, Vallejo and Napa Valley Railroad Company "were not retained in the treasury, or canceled, or destroyed as perhaps they should have been, but reissued." Therefore, the bonded indebtedness of the San Francisco, Vallejo and Napa Valley Railroad Company in June, 1911, was not $1,500,000.00, as shown in the company's annual report to the Commission, but $1,979,000.00, as shown by the testimony of the company's representative. There is nothing to show that additional property was acquired through the reissuing of these exchanged $497,000.00 face value of bonds.

The evidence in this case further shows that by the organization of the present company, namely, the San Francisco, Napa and Calistoga Railway, this bonded indebtedness of $1,979,000.00 in first mortgage bonds was reduced to $1,060,000.00 in mortgage and debenture bonds, of which $450,000.00 was first mortgage bonds and $610,000.00 debenture bonds. The balance of $150,000.00 of the present outstanding indebtedness was used for construction purposes.

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The following table presents the financial condition of the San Francisco, Napa and Calistoga Railway for the years ending June 30, 1912, 1913, and 1914, as shown by the annual report of this company to the Commission:

No.	Items	1912	1913	1914
1.	Capital stock	$2,000,000 00	$2,000,000 00	$2,000,000 00
2.	Capital stock outstanding	2,000,000 00	2,000,000 00	731,700 00
3.	Held by company as delinquent			1,268,300 00
4.	Mortgage bonds	$600,000 00	$600,000 00	$600,000 00
5.	Plain bonds, debentures and notes	610,000 00	610,000 00	643,000 00
6.	Total par value outstanding	1,210,000 00	1,210,000 00	*1,199,100 00
7.	Total outstanding liabilities	$3,322,005 12	$3,298,912 50	$3,374,999 63
8.	Total outstanding liabilities per mile	93,540 73	79,308 41	81,137 60
9.	Cost of road and equipment	$3,173,796 33	$3,241,969 41	$3,266,539 02
10.	Cost of road and equipment per mile	93,788 30	77,939 45	73,372 30

*In treasury, $24,900.00. As collateral security, $19,000.00.

3. Revenues and Expenses.

The greater portion of the revenue of this company is derived from the passenger traffic which, during the year 1914, amounted to 88 per cent of the total revenue. Passenger rates are based on a 3 cent per mile rate. The company also issues a weekly commutation ticket for the Mare Island Navy Yard employees and permits a half-fare rate to the members of the Veterans' Home.

The freight revenue is derived from the hauling of garden truck, fruits, dairy products and products of leather factories and cement mills.

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The following table presents the more important revenue, expense and traffic statistics for the years ending 1912, 1913 and 1914, as shown by the annual reports of this company to the Commission:

No.	Items	1912	1913	1914
1.	Mileage, main line miles	35.52	41.60	41.60
	Operating revenue.			
2.	Passenger traffic	$169,718 19	$192,504 34	$196,179 09
3.	Freight traffic	14,375 27	18,489 58	19,743 99
4.	Parlor, chair or special car		1,025 00	1,382 75
5.	Express	4,255 46	3,405 86	4,696 77
6.	Total transportation revenue	$188,348 92	$215,424 78	$224,002 60
7.	Revenue other than transportation	1,049 31	1,062 53	1,273 29
8.	Total revenue	$189,398 23	$216,487 31	$225,275 89
9.	Total revenue per mile	5,332 91	5,204 52	5,415 81
	Operating expenses.			
10.	Maintenance of way and structures	$21,675 19	$20,731 84	$29,559 53
11.	Maintenance of equipment	13,714 07	13,942 94	40,597 86
12.	Traffic expenses	2,120 26	4,277 68	4,298 90
13.	Transportation expenses	51,073 28	49,380 56	59,492 33
14.	General expense	16,664 29	33,597 70	*135,738 84
15.	Total operating expenses	$105,247 09	$121,930 67	$269,687 46
16.	Total expenses per mile	2,963 47	2,981 30	6,483 49
17.	Ratio expense to revenue	55.7%	56.3%	119.7%
18.	Net operating income	$84,151 14	$94,556 64	*$44,411 57*
19.	Gross income less operating expenses	84,312 84	95,133 85	*43,917 44*
	Deductions from income.			
20.	Taxes	$10,230 43	$7,382 10	$15,859 89
21.	Interest, funded debt	34,046 66	62,022 50	63,764 59
22.	Interest, floating debt			4,023 16
23	Total deductions	$44,277 09	$69,404 60	$83,647 64
24.	Net income	40,035 75	25,729 25	*127,565 08*
25.	Surplus for year	40,035 75	25,729 25	*127,565 08*
26.	Surplus at close of year	44,801 49	57,707 93	*69,808 60*
	Traffic statistics.			
27.	Passenger car mileage	282,084	339,975	379,293
28.	Freight and express car mileage	56,109	72,188	88,116
29.	Total car mileage	338,193	412,163	467,409
30.	Revenue passengers carried	615,351	667,423	652,587
31.	Average fare—passenger	$0.27581	$0.28843	$0.30368
32.	Operating revenues per car mile	0.56003	0.52525	0.48196
33.	Operating expenses per car mile	0.31120	0.29583	0.57698

*Injuries and damages. Wreck, June 19, 1913, $110,824.35.

4. Original Cost.

In the inventory and appraisal submitted by the company to which reference has heretofore been made, the original cost of this road was shown to be the amount of $1,409,433.47. This item, however, upon investigation was found to be an estimate only and not the actual original cost of the road. The early records of the two preceding companies were poorly kept, and at the present time many records and

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vouchers are missing. The company made an attempt to ascertain the original cost by segregating certain amounts found in the records. This, however, was found to be impossible due to the lack of proper information.

The company then made up the estimated original cost as shown in the appraisal submitted to the Commission.

In the valuation report submitted by the engineering department the item of original cost was disregarded. This was due to the fact that it was impossible from the records of the company to determine an original cost in accord with our definition of that term, as hereinbefore shown.

5. Reproduction Cost.

The company, in its valuation report, showed the reproduction cost as of June 30, 1913, to be the sum of $1,568.771.68, as shown by Exhibit "A." To the various items making up this amount the engineering department added the company's charges for additions and betterments for the year ending June 30, 1914, thereby determining an approximate figure for the reproduction cost as of June 30, 1914, totaling $1,593,346.29, as shown by Exhibit "B." This item is comparable to the reproduction cost as determined by the engineering department as of the same date. The detail of the addition and betterment charges are shown in the engineering department's report, to which reference is hereby made. The reproduction cost of the operative property as of June 30, 1914, as determined by the engineering department, is the sum of $1,212,179.73, as shown by Exhibit "C." The engineering department also found the reproduction cost of this company's nonoperative property to be the sum of $10,797.00, or a total for both operative and nonoperative property of $1,222,976.73.

The difference between the reproduction cost as claimed by the company and as shown by the engineering department, is due to the fact that the engineer in making up the company's appraisal used unit prices both higher and lower than seemed justifiable and which were not in accord with average present prices or what the company actually paid. The largest discrepancies occurred in the so-called "overhead expenses," for which the company made unusually high allowances as compared with what have been found by the engineering department to be fair percentages for reproduction cost estimates of other similar property in this State.

In the valuation report as submitted by the engineering department, the amounts for Accounts 2 and 3, Right of Way and Other Lands Used in Electric Railway Operations, were determined by ascertaining the present market value of land, to which was added certain arbitrary percentages, such as multiples, cost of acquisition and interest charges.

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Since the time of the valuation the Supreme Court of the United States has definitely rejected the so-called multiple method for valuing railroad rights of way (*Minnesota Rate Case*, 230 U. S. 352, page 455). In this decision the court says:

> "Assuming that the company is entitled to a reasonable share in the general prosperity of the communities which it serves, and thus to attribute to its property an increase in value, still the increase so allowed, apart from any improvements it may make, can not properly extend beyond the fair average of the normal market value of land in the vicinity having a similar character. Otherwise we enter the realm of mere conjecture. We therefore hold that it was error to base the estimates of value of the right of way, yards and terminals upon the so-called "railway value" of the property. The company would certainly have no ground of complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without additions by the use of multipliers, or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of 'engineering,' 'superintendence,' 'legal expense,' 'contingencies' and 'interest during construction.'"

This language of the Supreme Court clearly rejects the so-called multiple theory, and I do not consider it necessary to enter into a further discussion of the valuation principles involved. The Commission is now engaged merely in establishing certain facts and elements entering into the value of this property, and it is sufficient to say that in the estimate of reproduction cost of this railroad, the rights of way and other lands are valued on the basis of present market value of adjoining and similar lands without any arbitrary additions of multiples or other allowances.

I find, therefore, that the reproduction cost, as that term has hereinbefore been defined, of the operative property of the San Francisco, Napa and Calistoga Railway, as of June 30, 1914, is the sum of $1,212,179.73, and the reproduction cost of the non-operative property is the sum of $10,797.00, resulting in a total for both operative and nonoperative property of $1,222,976.73.

6. Reproduction Cost Less Depreciation.

Reproduction cost less depreciation, as reported by the company as of June 30, 1913, and shown by Exhibit "A," is $1,374,144.63. As was done under the heading "reproduction cost," the engineering department added to the various items making up the total of the reproduction cost less depreciation in the company's appraisal, the

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company's addition and betterment charges for the year ending June 30, 1914. On these addition and betterment charges the engineering department did not attempt to determine the amount of depreciation. As a matter of fact, on June 30, 1914, all such addition and betterment items had been in use less than one year and would show a very small amount of depreciation. This resulted in a total as of June 30, 1914, of $1,398,719.24, as shown by Exhibit "B." As above stated, the detail of all addition and betterment charges are shown in the engineering department's report, to which reference is hereby made.

The reproduction cost less depreciation of the operative property, as of June 30, 1914, as ascertained by the engineering department in its valuation report, is $1,000,049.19, shown by Exhibit "C." The same value as determined by the engineering department of the nonoperative property is $10,797.00, giving a total for the entire property, both operative and nonoperative, of $1,010,846.19. As hereinbefore stated, the company made no objections to the values determined by the engineering department, and I will, therefore, accept these figures.

What has been said under the heading of "reproduction cost" regarding the values ascertained and allowed in Accounts 2 and 3, Right of Way and Other Lands Used in Electric Railway Operations, is also reflected under this heading. In determining the reproduction cost less depreciation, the engineering department allowed the same amount for land as was allowed under the heading "reproduction cost."

I find, therefore, that the reproduction cost less depreciation, as that term has hereinbefore been defined of the operative property of the San Francisco, Napa and Calistoga Railway, as of June 30, 1914, is the sum of $1,000,049.19, and the reproduction cost less depreciation of the nonoperative property amounts to $10,797.00, resulting in a total for both operative and nonoperative property of $1,010,846.19.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of December, 1915.

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EXHIBIT "A."

Owning company, San Francisco, Napa and Calistoga Railway; operating division, total.
Field inspectors, York, Hearn & Herbert; York, Hearn & Herbert, office compilers; date compiled, June 25, 1913; main line track, 41.5960 miles; yard tracks, sidings, etc., 2.9260 miles; total, 44.5220 miles; valuation as of June 30, 1913.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost less depreciation
40	----	1	Engineering	$22,500 00	$25,511 40	100	$25,511 40
1	1	2	Right of way	69,825 70	127,950 54	100	127,950 54
2	2	3	Other land used in electric railway operations	29,174 05	39,575 00	100	39,575 00
3	3	4	Grading	79,637 40	79,637 40	121	96,361 00
4	4	5	Ballast	46,099 49	46,099 49	121	55,738 66
5	5	6	Ties	73,349 70	85,914 04	66	56,880 76
6	6	7	Rails	159,319 54	177,698 74	75	132,391 27
7	7	7	Track fastenings and joints	27,337 11	28,664 36	71	20,387 36
8	8	8	Special work	5,270 00	5,378 00	83	4,479 00
9	9	8	Frogs and switches	5,103 00	5,600 00	71	3,966 43
10	10	9	Underground construction				
11	11	10	Paving	22,592 22	25,187 18	74	18,745 05
12	12	11	Tracklaying and surfacing	63,048 18	69,345 51	100	69,345 51
13	13	12	Roadway tools	976 00	976 00	59	576 09
14	14	13	Tunnels				
15	----	14	Elevated structures and foundations				
16	15	15	Steel bridges and trusses				
17	16	15	Pile and frame trestles	21,906 25	21,906 25	70	15,336 09
18	17	15	Culverts	4,076 35	4,076 35	86	3,520 02
19	18	16	Fences and cattle guards	6,485 68	6,340 35	75	4,755 26
20	19	16	Crossings and signs	3,270 80	3,270 80	115	3,766 35
21	20	17	Interlocking plants	150 00	150 00	75	135 00
22	21	17	Signal apparatus				
23	22	18	Telegraph and telephone lines	2,926 26	3,242 52	80	2,594 02
24	23	19	Poles and fixtures	50,820 75	50,820 75	69	34,893 65
25	24	20	Underground conduits				
26	25	21	Transmission system	13,909 93	15,930 91	95	15,134 36
27	26	22	Distribution system	61,683 30	64,071 14	80	51,034 80
28	27	23	Dams, canals and pipe lines				
29	28	24	Power plant buildings	3,000 00	3,000 00	85	2,550 00
30	29	25	Substation buildings	725 00	725 00	86	622 50
31	30	26	General office buildings				
32	31	27	Shops and car houses	12,000 00	12,000 00	85	10,200 00
33	32	28	Stations and waiting rooms	13,260 47	13,260 47	93	12,333 75
34	33	28	Miscellaneous buildings	1,000 00	1,000 00	60	600 00
35	34	29	Docks and wharves	10,492 22	10,492 22	60	6,295 20
36	35	30	Power plant equipment	56,397 94	56,397 94	69	38,983 67
37	36	31	Substation equipment	5,457 75	5,457 75	74	4,040 94
38	37	32	Shop equipment	8,269 00	8,269 00	83	6,857 86
39	38	33	Park and resort property				
41	----	34	Cost of road purchased				
42	----	42	Injuries and damages				
43	39	35	Cars	100,950 00	100,950 00	72	74,210 00
44	40	35	Freight train cars	5,150 00	5,150 00	50	2,575 00
45	41	36	Steam locomotives				
46	42	36	Electric locomotives				
47	43	37	Electric equipment of cars	99,500 00	104,000 00	72	75,350 00
48	44	38	Other rail equipment				
49	45	39	Miscellaneous equipment	1,800 00	3,600 00	33	1,200 00
50	----	40	Law expenses, 1 per cent, classes 1 to 49, inclusive	27,208 00	30,329 17	100	30,329 17
			Contingent expenses, 5 per cent, classes 1 to 52, inclusive	139,442 18	155,436 97	100	155,436 97
52	46	44	Miscellaneous				
53	----	41	Interest, 5 per cent, classes 1 to 51, inclusive	139,442 18	155,436 97	100	155,436 97
55	47	----	Stores and supplies on hand for use in California	15,376 42	15,918 86	88	14,025 37
			Grand total	$1,400,433 47	$1,568,771 68	88	$1,374,144 68
			Average per mile for main track	33,884 00	37,714 00	----	33,035 00

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EXHIBIT "B."

Owning company, San Francisco, Napa and Calistoga Railway; operating company, same; valuation unit, entire line; from Vallejo to Calistoga, Solano and Napa counties.

Submitted with report of Assistant Engineer R. C. Ashworth; date compiled, March, 1915; main line first track, 41.596 miles; yard tracks, sidings, etc., 2.926 miles; total, 44.522 miles. Valuation as of June 30, 1914.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
40	----	1	Engineering	----------	$25,524 83	100	$25,524 83
1	1	2	Right of way	----------	127,950 54	100	127,950 54
2	2	3	Other land used in electric railway operations	----------	39,685 58	100	39,685 58
3	3	4	Grading	----------	79,637 40	121	96,323 00
4	4	5	Ballast	----------	47,290 99	121	56,930 16
5	5	6	Ties	----------	85,914 04	66	56,880 76
6	6	7	Rails	----------	178,376 08	75	133,008 61
7	7	7	Track fastenings and joints	----------	28,664 36	71	20,387 36
8	8	8	Special work	----------	6,152 76	85	5,253 76
9	9	8	Frogs and switches	----------	5,600 00	71	3,966 43
10	10	9	Underground construction	----------	----------	----------	----------
11	11	10	Paving	----------	27,320 13	76	20,878 00
12	12	11	Tracklaying and surfacing	----------	70,106 33	100	70,106 33
13	13	12	Roadway tools	----------	1,236 60	67	831 69
14	14	13	Tunnels	----------	----------	----------	----------
15	----	14	Elevated structures and foundations	----------	----------	----------	----------
16	15	15	Steel bridges and trusses	----------	----------	----------	----------
17	16	15	Pile and frame trestles	----------	21,906 25	70	15,398 09
18	17	15	Culverts	----------	4,431 78	87	3,875 45
19	18	16	Fences and cattle guards	----------	6,395 60	75	4,810 51
20	19	16	Crossings and signs	----------	3,270 80	115	3,766 35
21	20	17	Interlocking plants	----------	428 34	96	413 34
22	21	17	Signal apparatus	----------	----------	----------	----------
23	22	18	Telegraph and telephone lines	----------	3,311 12	80	2,662 62
24	23	19	Poles and fixtures	----------	51,675 14	69	35,748 04
25	24	20	Underground conduits	----------	----------	----------	----------
26	25	21	Transmission system	----------	15,931 63	95	15,135 08
27	26	22	Distribution system	----------	64,071 14	80	51,034 80
28	27	23	Dams, canals and pipe lines	----------	----------	----------	----------
29	28	24	Power plant buildings	----------	3,000 00	85	2,550 00
30	29	25	Substation buildings	----------	725 00	86	622 50
31	30	26	General office buildings	----------	----------	----------	----------
32	31	27	Shops and car houses	----------	12,758 88	86	10,958 88
33	32	28	Stations and waiting rooms	----------	14,081 62	93	13,154 91
34	33	28	Miscellaneous buildings	----------	2,026 77	80	1,626 77
35	34	29	Docks and wharves	----------	10,505 61	60	6,508 59
36	35	30	Power plant equipment	----------	56,397 94	69	38,983 67
37	36	31	Substation equipment	----------	5,457 75	74	4,040 94
38	37	32	Shop equipment	----------	8,294 50	83	6,883 36
39	38	33	Park and resort property	----------	----------	----------	----------
41	----	34	Cost of road purchased	----------	----------	----------	----------
42	----	42	Injuries and damages	----------	----------	----------	----------
43	39	35	Cars	----------	112,150 00	76	85,410 00
44	40	35	Freight train cars	----------	8,161 05	69	5,586 05
45	41	36	Steam locomotives	----------	----------	----------	----------
46	42	36	Electric locomotives	----------	----------	----------	----------
47	43	37	Electric equipment of cars	----------	104,178 96	72	75,528 96
48	44	38	Other rail equipment	----------	----------	----------	----------
49	45	39	Miscellaneous equipment	----------	3,600 00	33	1,200 00
50	----	40	Law expenses	----------	30,329 17	100	30,329 17
			Contingencies	----------	155,436 97	100	155,436 97
52	46	44	Miscellaneous	----------	4 80	100	4 80
53	----	41	Interest	----------	155,436 97	100	155,436 97
55	47	----	Stores and supplies on hand for use in California	----------	15,918 86	88	14,025 37
			Grand total	----------	$1,599,346 29	88	$1,398,719 24
			Average per mile for main track	----------	38,304 79	88	33,625 79
			Total, "road," I.C.C. Accounts 1 to 34, inclusive	----------	1,008,129 51	87	875,760 96
			Total, "equipment," I.C.C. Accounts 35 to 39, inclusive	----------	228,000 01	74	167,725 01
			Total, "general," I.C.C. Accounts 40 to 44, inclusive	----------	185,766 14	100	185,766 14

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EXHIBIT "C."

Owning company, San Francisco, Napa and Calistoga Railway; operating company, same; valuation unit, entire line; from Vallejo to Calistoga, Solano and Napa counties.

Submitted with report of Assistant Engineer R. C. Ashworth; date compiled, March, 1915; main line first track 41.596 miles; yard tracks, sidings, etc., 2.926 miles; total, 44.522 miles. Valuation as of June 30, 1914.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
40	----	1	Engineering		$37,845 17	100	$37,845 17
1	1	2	Right of way		88,464 59	100	88,464 59
2	2	3	Other land used in electric railway operations		28,268 00	100	28,268 00
3	3	4	Grading		54,554 50	108	58,810 15
4	4	5	Ballast		40,240 15	100	40,240 15
5	5	6	Ties		68,803 99	56	38,694 25
6	6	7	Rails		176,795 77	89	156,766 13
7	7	7	Track fastenings and joints		22,116 63	77	17,053 96
8	8	8	Special work		7,290 79	83	6,048 33
9	9	8	Frogs and switches		6,908 90	66	5,181 89
10	10	9	Underground construction				
11	11	10	Paving		28,447 71	80	22,613 76
12	12	11	Tracklaying and surfacing		55,549 65	83	45,950 36
13	13	12	Roadway tools		1,266 90	70	886 83
14	14	13	Tunnels				
15	----	14	Elevated structures and foundations				
16	15	15	Steel bridges and trusses		6,012 17	80	4,809 31
17	16	15	Pile and frame trestles		10,795 85	70	7,557 09
18	17	15	Culverts		3,680 53	86	3,172 73
19	18	16	Fences and cattle guards		6,048 41	75	4,536 29
20	19	16	Crossings and signs		2,871 54	99	2,860 16
21	20	17	Interlocking plants				
22	21	17	Signal apparatus				
23	22	18	Telegraph and telephone lines		4,310 29	80	3,426 54
24	23	19	Poles and fixtures		55,759 84	72	40,278 47
25	24	20	Underground conduits				
26	25	21	Transmission system		17,255 71	87	15,702 70
27	26	22	Distribution system		67,945 26	73	49,768 38
28	27	23	Dams, canals and pipe lines				
29	28	24	Power plant buildings		5,519 61	80	4,415 69
30	29	25	Substation buildings		752 25	86	644 91
31	30	26	General office buildings		512 50	85	435 63
32	31	27	Shops and car houses		11,257 58	85	9,568 94
33	32	28	Stations and waiting rooms		15,067 16	91	13,642 76
34	33	28	Miscellaneous buildings		2,003 33	54	1,087 37
35	34	29	Docks and wharves		11,345 59	70	7,941 92
36	35	30	Power plant equipment				
37	36	31	Substation equipment		64,863 77	69	44,645 64
38	37	32	Shop equipment		8,927 00	81	7,698 75
39	38	33	Park and resort property				
41	----	34	Cost of road purchased				
42	----	42	Injuries and damages		5,097 89	100	5,097 89
43	39	35	Cars		107,061 24	70	74,459 10
44	40	35	Freight train cars		8,827 00	83	7,199 00
45	41	36	Steam locomotives				
46	42	36	Electric locomotives				
47	43	37	Electric equipment of cars		106,786 86	68	72,131 71
48	44	38	Other rail equipment				
49	45	39	Miscellaneous equipment		2,155 25	66	1,414 29
50	----	40	Law expenses		7,569 03	100	7,569 03
51	46	43	Taxes		4,908 66	100	4,908 66
52	46	44	Miscellaneous		10,371 54	100	10,371 54
53	----	41	Interest		31,425 79	100	31,425 79
55	47	----	Stores and supplies on hand for use in California		16,495 33	100	16,495 33
			Grand total		$1,212,179 73	83	$1,000,049 19
			Average per mile for main track		29,141 74	83	24,041 90
			Total, "road," I.C.C. Accounts 1 to 34, inclusive		911,481 14	86	768,976 84
			Total, "equipment," I.C.C. Accounts 35 to 39, inclusive		224,830 35	69	155,204 10
			Total, "general," I.C.C. Accounts 40 to 44, inclusive		59,372 91	100	59,372 91
			Total, nonoperative property (not included in above totals) Account 3		10,797 00	100	10,797 00
			Total, operative and non-operative properties		1,222,976 73	------	1,010,846 19

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DECISION No. 2960.

IN THE MATTER OF THE APPLICATION OF THE CITY OF LOS ANGELES AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES, TO HAVE THE RAILROAD COMMISSION FIX AND DETERMINE THE COMPENSATION TO BE PAID THE SOUTHERN CALIFORNIA EDISON COMPANY FOR ITS ELECTRIC DISTRIBUTING SYSTEM.

Application No. 1424.

Decided December 8, 1915.

City of Los Angeles applies to the Commission for an order fixing the just compensation to be paid for the franchise and distributing system of the Southern California Edison Company in that city. The city proposed to acquire franchise rights and all of the distributing system with the exception of several transmission lines and a dispute arising as to whether or not this petition included all franchise rights or only a portion thereof, a preliminary hearing was held and the Commission being of the opinion that its jurisdiction rests in finding a value for the properties in question and that the matter in dispute is a subject to be adjudicated by the courts and not by this Commission, such findings are adopted as the opinion of the Commission.

Albert Lee Stephens, W. B. Mathews, and *William B. Himrod,* for Applicants.

Peter F. Dunne, H. H. Trowbridge, and *Harry J. Bauer,* for Southern California Edison Company.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

PRELIMINARY OPINION.

This is an application under section 47 of the Public Utilities Act whereby the Commission is asked by the city of Los Angeles to fix the just compensation to be paid by said city to Southern California Edison Company upon the condemnation by said city of a certain portion of the electrical plant of said company.

Subsequent to the filing of the application, certain territory was annexed and became a part of the city of Los Angeles and thereupon by amendatory and supplemental petition there was added to the property upon which just compensation should be fixed by the Commission, certain parts of the company's plant situated in such annexed territory.

After the filing of the original application and the amendatory and supplemental petition serious dispute arose between the representatives of the city of Los Angeles and representatives of the company as to whether or not certain property belonging to said company was included in the description contained in the application and supplement thereto.

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Because of the material difference in the result which might be arrived at by the Commission dependent on whether or not this disputed property was included in the description, it was deemed wise to hold a hearing for the purpose of giving the city and the company an opportunity to fully present such evidence and argument as would place before the Commission the contention of each side as to what property was before the Commission upon which just compensation should be fixed. This hearing was held on November 22, 1915, and further hearing was adjourned to December 13, 1915.

There is no controversy over the description of the physical properties sought to be condemned by the city. The controversy arises from the city's claim that it has described in its application, and therefore the Commission is to fix the just compensation to be paid for only so much of the company's rights to occupy and use the streets of the city as are necessary to maintain and operate the part of the plant sought to be condemned.

The company claims that the city has by the description in its application included all of the rights of the company to occupy and use the streets, alleys and public places in the city. There are certain important electric lines of the company located in the city which have been purposely left out of the description in the application as the city does not propose to acquire them.

We must look to the description of property contained in the application as determining this matter because all parties, as well as the Commission, are bound by the application and the description of the property therein contained.

In paragraph XI of the original application, we find the city declaring its purpose "to acquire the distributing system and property described and enumerated in said applicant's Exhibit A and in said applicant's Exhibit B."

In Exhibit A, above referred to, on sheet 3 thereof, is found the following:

"Franchises.

The right to occupy and use the streets, alleys and public places within the city of Los Angeles for the distribution of electrical energy."

A careful examination of the application and the exhibits thereto attached, fails to disclose any modification or qualification of this language with relation to franchises or rights, and therefore, it seems clear that the language employed embraces all of the rights or franchises of the company to use the streets, alleys or public places within the city where such right is used for the distribution of electrical energy.

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Southern California Edison Company claims to operate its electrical system in the city of Los Angeles under section 19, article XI of the constitution as it stood prior to October, 1911, which provided in part:

> "* * * Any company * * * shall * * * have the privilege of using the public streets and thoroughfares thereof and of laying down pipes and conduits therein and connections therewith so far as may be necessary for introducing into and supplying such city and its inhabitants either with gas light or any illuminating light * * *."

The company also claims to operate under a franchise granted by the city of Los Angeles under an ordinance adopted July 15, 1895, section 1 of which ordinance reads as follows:

> "SECTION 1. That L. F. Scott, and assigns, is hereby granted for the period of twenty-five years from the date of taking effect of this ordinance, the right to erect and maintain poles upon and to run wires over and along the public streets, alleys and places in the city of Los Angeles and also to construct and maintain therein underground conduits, all for the purpose of carrying, furnishing and distributing electricity and electrical energy for motive power for engines, motors, elevators and for heating and lighting."

The city in its description uses the words "distribution of electrical energy," and inasmuch as there is doubt as to the exact meaning of these terms, it will be difficult, if not impossible, to reach a satisfactory conclusion, unless the application is amended so as to make definite and specific the franchise rights of the company which the city proposes to acquire.

In the amendatory and supplemental petition filed herein, in which property of Southern California Edison Company located in territory annexed to the city of Los Angeles subsequent to the filing of the original application herein is described, identical language is used with that in the original application in describing franchises which are sought to be acquired and, therefore, the same conclusion must be arrived at with regard to the description in this amendatory and supplemental petition as is reached with regard to the original.

It is not the function of this Commission to determine whether the city can by condemnation take a part of a franchise held or exercised by the company and leave the remainder of the franchise in effect.

However, under the terms of section 47 of the Public Utilities Act, the city may put before this Commission any part of a public utility property, whereupon it becomes the duty of the Commission to fix the just compensation to be paid therefor, regardless of any opinion the Commission may have as to the legality of forcibly separating the part desired by the city from the remainder. If this be true, then the

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Commission when called upon must fix the just compensation to be paid for a part of a franchise and if there be controversy as to the legal right of the city to take only such part, this controversy must be settled by the courts.

I recommend that the above findings be adopted and made the findings of the Railroad Commission of California.

ORDER.

For the reasons set out in the foregoing opinion, the findings contained in said opinion are hereby adopted as the findings of the Railroad Commission of the State of California.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of December, 1915.

DECISION No. 2961.

IN THE MATTER OF THE VALUATION OF THE PROPERTY OF CENTRAL PACIFIC RAILWAY COMPANY BETWEEN MOJAVE, KERN COUNTY, AND OWENYO, INYO COUNTY, CALIFORNIA (FORMERLY NEVADA AND CALIFORNIA RAILWAY COMPANY).

Case No. 196.

(Consolidated with Case No. 200.)

Decided December 8, 1915.

Investigation on the Commission's own motion to determine the various elements entering into the value of respondent's branch line running from Mojave to Owenyo. General review of this line's history, financial and operating conditions made, and the following conclusions reached:

Findings of fact: That the original cost as of June 30, 1912, of the operative physical properties of respondent here under consideration is the sum of $4,357,216.01; that the reproduction cost as of June 30, 1912, of the operative physical properties of respondent here under consideration is the sum of $4,182,683.83; that the reproduction value less depreciation or present value as of June 30, 1915, of the physical properties of respondent hereunder consideration is the sum of $4,014,956.90.

In connection with original cost respondent claims an item of $1,631,544.79 under the charges, transportation of men and materials and rent of equipment, and an additional item under train and engine service, amounting to $107,908.25. These items were billed through at full commercial rates of over 2¼ cents per ton mile and .03358 cents per passenger mile, an exceptionally high rate.

Held, That material sold by the company to its subsidiary companies should be billed out at cost with no profit added. That this company sold transportation to itself at a profit, such profit being charged to capital account and interest figured thereon during construction.

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Held, That it is improper for the company to charge to capital account under cost of road and equipment, any sums in excess of the actual cost in cash of transportation of men and materials for construction purposes; that it is also improper for the company to divert earnings during construction—that such earnings should be credited to cost of road. That a liberal allowance for transportation during construction is 5 mills per ton mile in level territory and 7 mills per ton mile in mountainous territory and a fair allowance for passenger transportation during construction is 1 cent per passenger mile. That the proper method of determining charges under this head is the market price f.o.b. California terminal points plus transportation at flat rates over the company's line to point of destination on the line under construction.

Held, That as these findings are merely to establish a value to be used in connection with any future proceeding in which it might be of use, no allowance will be made herein for interest, or right of way multiples used, in finding land values, though the full value of all donated lands will be included.

Held, An amount of $487,849.73, or over 12 per cent, is allowed for overhead expenses to cover engineering, law expenses, interest and other expenditures, engineering to include 5 per cent of this amount and law expenses 1 per cent.

Respondent contends that no depreciation has occurred on this line; in fact, that none can occur in the value of physical properties of railroads: *Held,* That irrespective of the standard of maintenance of a railroad, some depreciation is bound to occur. That 90 per cent of the original investment is a high average, the general average being approximately 85 per cent and though appreciation and other nonphysical assets of the company will in most cases offset this shrinkage in investment, it must be considered and allowances made in findings of this nature. Term defined, and methods used in arriving at an allowance under this head explained.

Jared How, for Central Pacific Railway Company, owner.

Henley C. Booth, for Southern Pacific Company, lessee.

S. D. Bledsoe, general attorney.

Gardiner Lathrop, general solicitor, and

E. W. Camp, attorney, for coast lines, The Atchison, Topeka and Santa Fe Railway Company, *amici curiæ.*

REPORT OF THE COMMISSION.

This is one of the so-called railroad valuation cases brought upon the Commission's own initiative for the purpose of ascertaining and reporting certain facts and estimates of cost which enter into the value of the property of the various railroad corporations in the State of California. The proceedings in this case were conducted, and all hearings held, before Commissioner Eshleman. Prior to his retirement from the Commission, he submitted a statement of his findings and views on the issues involved in this case, and these findings and views, after thorough consideration by the Commission, are reflected in this opinion.

The case deals with the first valuation unit of the Southern Pacific Company's lines (Pacific system) in California, and covers that part

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of the Central Pacific Railway which lies between Mojave, Kern County, and Owenyo, Inyo County, California, a distance of 142.68 miles. This railway was constructed under the name of and was formerly known as the Nevada and California Railway Company. In this decision we shall designate the owner of this property as "the company."

Inasmuch as this decision may be a precedent in the valuation of the remaining portion of the Southern Pacific Company's lines in California, the company feels that considerable importance attaches to these proceedings, and the Commission shares in this view. Valuation matters of fundamental importance will, therefore, be discussed herein in some detail, though they may not, in terms of money, appear of much consequence as far as the valuation of this particular line is concerned. In the appraisal of other units of the Southern Pacific Company's system these same items will involve many millions of dollars.

The valuation of the railroads in California was undertaken by the Commission under the provisions of section 20 of the Stetson-Eshleman Act, effective February 10, 1911, and was continued under the provisions of the Public Utilities Act, effective March 23, 1912. The sections of the Public Utilities Act particularly applicable to these proceedings are sections 47 and 70. For the general procedure in these valuation cases and for a general description of the work performed by the Commission's engineering department in connection therewith, reference is hereby made to this Commission's opinion and findings in Case No. 206, the first of these cases, being the matter of ascertaining the value of the property of the Stockton Terminal and Eastern Railroad Company. (Vol. 2, Opinions and Orders of the Railroad Commission of California, p. 777.)

It will be well to note that herein, as in that case, we shall make findings of fact on various elements which bear on the value of the property as shown by the evidence in this case, and that we shall not make findings on the ultimate question of the value of the property, irrespective of the purpose or purposes for which the value is ascertained. We shall leave to the future the use of these facts or such thereof as may be material in any proceeding in which they may become relevant.

In making findings in this case we shall consider the following matters:

1. Organization, construction and operation.
2. Stocks and bonds.
3. Revenues and expenses.
4. Original cost, as defined.
5. Reproduction cost, as defined.
6. Reproduction cost less depreciation, as defined.

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We shall first define the three elements of value which we propose to find.

> The term "original cost" means the original book cost, and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's classification for steam roads, in cash or its equivalent in terms of cash, by the public utility for its operative property in the State of California, as of the date of the valuation.
>
> The term "reproduction cost" means the estimated cost in cash of reproducing, in the condition (new or second-hand) in which it was acquired, the physical property of the public utility in the State of California, as of the date of the valuation; to which is added the value of all operative lands, based on the market value of adjacent and similar lands, the actual or estimated cost of acquiring franchises and the estimated cost of overhead expenditures for engineering, law, interest and other similar items.
>
> The term "reproduction cost less depreciation" means the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, inadequacy, or other causes, this diminution being called depreciation, plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called appreciation.

We shall first review briefly the history of this case. On October 1, 1912, the Central Pacific Railway Company filed with the Commission an inventory and estimate of the original cost of its line between Mojave and Owenyo, prepared by the chief engineer of the company, as of June 30, 1912, which aggregated $5,193,203.63. This statement was filed in accordance with the Commission's order to the Central Pacific Railway Company to prepare and file an inventory and appraisal of its property on forms furnished by the Commission and to show original cost, reproduction cost, and depreciated reproduction cost. It will be noted that the company complied with this order only in that it estimated the original cost but did not make an estimate of the reproduction cost or the depreciated reproduction cost. The Commission was subsequently advised that this estimate did not include interest charges on capital invested in construction, aggregating $336,955.99. The addition of this sum to the previous amount gives an original cost, as submitted by the company, of $5,530,159.62. A summary sheet of the company's original cost estimate is attached to this opinion and marked Exhibit "A."

On April 16, 1913, the Commission's engineering department submitted its detailed valuation report in this proceeding, a copy of which was furnished to the company. The final summary sheet of this report is attached hereto as Exhibit "B." This report was subsequently revised, the revision being caused principally by a change in the method

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of determining the cost of transportation of men and material for construction, a matter about which we shall have more to say later. Certain other and minor changes were also made. The company received a statement of this revision also. This revised report was the basis on which this case was heard. Thereafter hearings were held and arguments were heard on January 31st, February 2d, March 2d, and August 7, 1914. The railway company was represented by counsel and made numerous objections to the report of the Commission's engineering department. Certain of these objections appeared to be well founded and the department made the necessary changes. Its final report is now before the Commission and the summary sheet is attached to this opinion as Exhibit "C." The company asked and was granted permission to file a brief setting forth its attitude on certain fundamental valuation principles and its objection to certain methods adopted by the Commission's engineering department. This brief has been filed. The Atchison, Topeka and Santa Fe Railway Company, through counsel, also appeared before the Commission and filed its brief as *amicus curiæ*. This brief also deals with a number of the fundamental questions at issue.

We have given considerable study to the reports, transcripts and briefs before us and have considered the fundamental issues involved. The case is now ready for decision.

Organization, Construction and Operation.

The line under consideration is now owned by the Central Pacific Railway Company and is leased by that company to the Southern Pacific Company. The latter company operates the road as a branch line of the San Joaquin Division. The road originally was a portion of the properties of the Nevada and California Railway Company and is still generally referred to by that name. This latter company was incorporated under the laws of California on April 13, 1905, "to construct and operate a narrow-gauge or standard-gauge steam railroad and to run from and between the following places:

1. *Main Line.* Commencing at or near Hazen Station on the line of the Central Pacific Railway, county of Churchill, State of Nevada, and running thence by the most practicable route, in a general southerly direction in and through the counties of Churchill, Logan, and Esmeralda, in the State of Nevada, and in and through the counties of Mono, Inyo, and Kern, in the State of California, to a point at or near Mojave Station on the line of the Southern Pacific Railroad, in said county of Kern, State of California.

2. *Branch Line.* A branch line of railroad commencing at or near Churchill Station on the present line of the Carson and Colorado Railway, in the county of Lyon, State of Nevada, and running thence in a general westerly direction by the most prac-

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ticable route to a point at or near Mound House Station on the present line of the Virginia and Truckee Railroad in said county of Lyon.

The estimated length of the main line is 430 miles and the estimated length of branch line is 27 miles, a total of 457 miles."

Of this 457 miles of railroad described in the articles of incorporation, the entire narrow-gauge portion was in existence at the time of the formation of the new company, while the broad-gauge line from Mojave to Owenyo remained to be built. The Nevada lines were a consolidation of several independent companies whose disconnected tracks were linked together and connected with the Southern Pacific Company's (Central Pacific) San Francisco-Ogden main line at Hazen, Nevada. Shortly after the incorporation of the Nevada and California Railway Company in 1905, surveys were completed through Inyo, Kern and San Bernardino counties in California, giving the road connection at Mojave, Kern County, with the Southern Pacific Company's Sunset lines and with The Atchison, Topeka and Santa Fe Railway Company's overland route. These surveys also provided for a reconstruction over easier grades and on standard gauge of the company's narrow-gauge lines in Nevada. The road, when completed, will be a cut-off for Los Angeles and Southern California traffic between the Ogden and Sunset lines of the Southern Pacific Company. The saving effected in distance and in grades over the present lines will be very large. The estimates for the proposed short line involved a great deal of money and construction was deferred. In the year 1908, however, the city of Los Angeles called for bids for the transportation of a large amount of freight in connection with the construction of the Owens River aqueduct. The line of this water supply runs through the desert, for a considerable distance paralleling the line of the railroad as now constructed. In order to secure the aqueduct business the Southern Pacific Company proposed to commence construction on this short line immediately and entered into an agreement with the city of Los Angeles whereby it secured this business. The immediate reason for the construction of this road in 1908, therefore, was the building of the Los Angeles aqueduct.

The Southern Pacific Company advanced the construction funds and the work was pushed forward with the utmost vigor. According to the company's contract with the city of Los Angeles, certain points were to be reached on certain specified dates and in certain instances temporary lines had to be constructed in order to comply with the terms of the contract.

On July 1, 1909, the Nevada and California Railway Company leased the completed portion of the road to the Southern Pacific Company, under the terms of a lease, a copy of which is on file with the Commission. This lease was terminated on March 1, 1912, when the Nevada

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and California Railway Company was sold to the Central Pacific Railway Company for $1,060,052.00 cash and "in further consideration of the assumption by the Central Pacific Railway Company of the bonded and other indebtedness" of the Nevada and California Railway Company. A copy of the deed is on file with the Commission. On March 16, 1912, the Central Pacific Railway Company leased this road together with several other newly acquired properties to the Southern Pacific Company. This lease merely makes the Nevada and California Railway Company subject to the terms and provisions of five older agreements under which the Central Pacific Railway Company leases all its lines to the Southern Pacific Company. Copies of these leases are also on file in this office. Construction between Mojave and Owenyo was completed in October, 1910, and the entire road has been in operation since October 21st of the same year.

Much of the country traversed is difficult and necessitated heavy construction work. Construction is in accordance with the Southern Pacific Company's main line standards, and the road is built in a thoroughly first-class manner. The ruling northbound grade is 1.75 per cent and the ruling southbound grade is 1.4 per cent. The maximum curve on the line is 6 per cent.

Only one passenger train per day each way operates over the line at this time. Since this line is operated as a part of the Southern Pacific Company's Pacific system, it appears unnecessary here to go further into the operation of this line.

Stocks and Bonds.

This line, as hereinbefore stated, is now owned by the Central Pacific Railway Company, and is leased as a portion of the Central Pacific Railway Company's lines to the Southern Pacific Company. As we have stated, the line was originally a part of the Nevada and California Railway Company. The capital stock of the Nevada and California Railway Company was $15,000,000.00. Of this capitalization, $457,000.00, being $1,000.00 for each mile of existing and projected railroad, was actually subscribed. In the lease of the Mojave-Owenyo line to the Southern Pacific Company of July 1, 1909, which was referred to above, there appears a provision affecting the payment of interest on bonds outstanding against this road. No bonds had been issued at the date of the lease, but on November 1, 1911, a bonded indebtedness of $15,000,000.00 was authorized, secured by a 6 per cent first mortgage due November 1, 1941, on the entire property of the Nevada and California Railway; $8,500,000.00 of the authorized amount was issued immediately. It is not practicable, and not necessary, at this time, to determine what portion of these securities were issued against the 142.68 miles of railroad under consideration. The Central Pacific holds all of the stock

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of the Nevada and California Railway Company, while all of the outstanding bonds ($8,500,000.00) are owned by the Southern Pacific Company. According to the annual reports to this Commission of the Central Pacific Railway Company and the Southern Pacific Company for the year 1912, accrued interest on the outstanding bonds amounted to $366,666.67. Of the $170,000.00 accrued interest during 1912 the Central Pacific Railway Company paid only $85,000.00.

Revenues and Expenses.

The territory traversed by this road is practically all desert, with very little traffic originating in it and the normal traffic on the line after reconstruction of the narrow-gauge portion will be through traffic. It is true that there are possibilities for considerable mining development in that region, but this business is as yet mostly prospective. No separate traffic statistics of the line under consideration are available, and it is not necessary to go into this phase of the subject, except in so far as the business done during the construction period affected the cost of the road. The revenue from such business, if the road had been built as an independent line, should have been credited in accordance with the accounting rules of the Interstate Commerce Commission to the construction account "earnings and operating expenses during construction." In this case, however, all of these earnings, including those from hauling men and material for the road being built, were absorbed by the Southern Pacific Company. This matter is closely related to the question of transportation charges and to the interest during construction and will be more fully discussed later. The connection between the building of the Los Angeles aqueduct and the building of this railroad has already been touched upon. The revenue from hauling aqueduct freight not only took care of all operating expenses during construction, which amounted to over $200,000.00, but in addition left a substantial surplus. The road was placed in operation in sections, and substantially in accordance with the terms of the Southern Pacific Company's agreement with the city of Los Angeles, namely:

Section 1, Mojave to Searles, 48 miles, on August 1, 1908.
Section 2, Mojave to Mabel, 92 miles, on April 1, 1909.
Section 3, Mojave to Haiwee, 104 miles, on November 1, 1909.
Section 4, Mojave to Olancha, 113 miles, on March 1, 1910.
Section 5, Mojave to Owenyo, 142.68 miles, on October 21, 1910.

Operating accounts were opened in October, 1908, and the entire line was turned over to the operating department of the Southern Pacific Company on October 21, 1910.

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Original Cost.

The original cost of this line as submitted by the Southern Pacific Company totals $5,530,159.62 (see Exhibit "A"). The total original cost as found by the engineering department of the Commission, according to the first report of the department, is $4,981,074.53 (see Exhibit "B"). In the revised report (Exhibit "C") the original cost is shown by the engineering department to be $4,357,216.01. It is necessary to go into the reason for these large differences. In general, and leaving out of consideration bookkeeping and clerical errors, it may be said that all expenditures for each account were checked by the Commission's engineering department against the books of the company and found to be correct.

Wherever the Commission's original cost differs from that shown by the company, this difference is due not to discrepancies in quantities or calculations, but to a difference in opinion as to what is or is not properly chargeable to original cost. In checking the company's books it was found that there are on file in the company's offices two separate and distinct records of original cost. The first record is the original cost as returned in the company's valuation by the chief engineer of the Southern Pacific Company. This original cost has been used generally in the engineering department's valuation of the road. The second cost record is the statement by the auditor of the Southern Pacific Company. This record differs from the first one chiefly in that the auditor has distributed to other accounts a large portion of the transportation expenses which in the chief engineer's cost statement are not distributed but carried in a lump sum. After the auditor has distributed this transportation and rent of equipment expense it is very difficult, if not impossible, to determine what portion in the grand total for any one account represents actual cash outlay for labor and material and what portion is made up of merely book charges. The auditor's cost statement had to be used by the Commission's engineering department in arriving at the proper charges to the interest account.

Comparison of the company's cost statement (Exhibit "A") with the original cost as given in Exhibit "C" will show that there is a difference between the two totals of $1,172,943.61. The differences are confined to five accounts, only three of which are of importance. They are:

Transportation of men and material, where the company's cost statement is reduced by	$1,075,555 88
Interest, where the reduction amounts to	69,959 32
Stores and supplies on hand for use in California, where the reduction amounts to	27,324 63

The explanation for the reduction in the latter item is simple. The company in its valuation has listed stores and supplies to the total of

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$27,324.63. The Commission's instructions provide for the valuation under this class of only such items as are "necessary and intended for the operation and maintenance of the company's railroad then existing, including extensions of sidings and spur tracks." The materials in store at Owenyo are left-overs from construction and do not follow this classification, the largest single item being 414 tons of 62-pound second-hand rail, taken up from temporary lines and shipped to the nearest convenient point. The position is taken that these stores are a portion of all the stores kept on hand by the Southern Pacific Company. The fact that they happen to be stored at Owenyo is no definite reason why they should be charged to this particular line. While all stores have been disregarded in the engineering department's valuation, it seems clear that a portion of the stores and supplies of the Southern Pacific Company's system would have to be allowed for the Mojave-Owenyo line if rates were being established. We have not completed our valuation of the Southern Pacific Company's entire system in California, and hence are not now in a position to determine the exact amount which should be allowed for this item in the present proceeding.

The largest and most important item of difference is in the charge against transportation of men and materials. It is in connection with this item that counsel for the company presented the principal argument. In order to arrive at a clearer understanding not only of the question involved in this particular case but in order to have the proper basis for the principle at issue, we shall first state the facts in connection with these transportation charges. Three separate accounts enter into this discussion, namely, I. C. C. Account 32, transportation of men and materials, I. C. C. Account 33, rent of equipment, and I. C. C. Account 35, earnings and operating expenses during construction. The company in its valuation has shown the following charges:

1. Transportation of men and material:		
(*a*) Freight and material	$1,291,772 49	
(*b*) Employees' fares	204,703 38	
		$1,496,475 87
2. Rent of equipment		135,068 92
Total		$1,631,544 79

The importance of these accounts will be recognized when it is seen that the sum of these two items equals 47 per cent of the total of all the construction accounts proper. The above total, however, does not actually represent the grand total of all transportation expenses which have been charged up to this line. It was the company's method to charge all transportation and rent of equipment costs into the two accounts above referred to with no attempt at distribution with one exception:

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The cost of what is termed by the company "train and engine service" is transferred to the appropriate account and does not appear as a separate total in the original cost. This latter item amounts to $107,908.25 and brings the total cost of transportation and equipment service to $1,739,453.04 or $12,191.30 per mile of road. An exhaustive investigation was made by the engineering department into the basis and methods of the company in handling these transportation accounts. The charges were finally reduced to a passenger and ton mile basis and the following figures were found:

Employees' Fares—Original Cost.

Item	As charged by Southern Pacific Co.
Number of employees hauled one mile (passenger miles)	6,094,499
Total cost of employees' transportation	$204,703 38
Average rate per passenger mile	$.03358
Number of employees hauled one mile per mile of constructed road	42,714
Cost of employees' transportation per mile of constructed road	$1,434 16

Freight—Original Cost.

Item	As charged by Southern Pacific Co.
Number of tons hauled one mile (ton miles)	46,750,000
Total cost of hauling company freight	$1,291,772 49
Average cost per ton mile	$.02763
Number of tons hauled one mile per mile of constructed road	327,656
Cost of company freight per mile of constructed road	$9,053 65

The company, it was ascertained, billed all freight from points of origin through to points on the operative portion of the line under construction at full commercial rates and charged a flat rate of 5 cents per passenger mile between Mojave and Owenyo. It will be noted that the average cost per ton mile as charged by the company is more than $2\frac{3}{4}$ cents. The average passenger mile rate of $.03358 appears also abnormally high.

The question is, therefore, whether or not this Commission will agree to the company's method of making transportation charges and if not, what the proper basis is for making such charges to the capital account of a road under construction.

It is evident that the Southern Pacific Company itself realizes that the transportation charge is out of proportion as compared with the total cost of the road. We quote from a letter of September 30, 1912,

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written by Mr. William F. Herrin, vice president and chief counsel of the Southern Pacific Company, and addressed to this Commission:

> "I am requested to say to you that, while the cost of transportation for men and material as stated may be a greater proportion of the total cost of the line than the cost statements of some other roads constructed under different circumstances will show, the cost of transportation shown in the Mojave-Owenyo statement is based on the tariff rates which were duly published and on file at the time the men and material moved. It was necessary to charge these tariff rates because the Nevada and California Railway Company had a separate and distinct entity from that of the Southern Pacific Company. The principle is illustrated and set forth in Conference Ruling No. 225 of the Interstate Commerce Commission."

The claim is made that the Nevada and California Railway Company was a separate corporate entity and that in accordance with the Interstate Commerce Commission accounting rules, full commercial tariff rates had to be charged for all freight and passenger transportation over the Southern Pacific Company's lines. In addition to this, full commercial rates were also charged for haul over such portions of the road under construction as were turned over to the operating department of the Southern Pacific Company under the lease of July 1, 1909. We shall have something more to say about the Interstate Commerce Commission regulations and instructions on this subject. But even if it were true that the Interstate Commerce Commission did permit such accounting methods, we doubt the propriety of making such methods a basis for determining values, especially in the case of cost and value of transportation. While the Nevada and California Railway Company undoubtedly was a corporate entity, the history of the company shows that from its incorporation to its sale to the Central Pacific Railway Company it was as much a part of the Southern Pacific Company as the Central Pacific Railway Company itself. In ascertaining original cost figures, the ground has been taken by the Commission's engineers that all material sold by the Southern Pacific Company to its subsidiary companies should be charged out at cost with *no* profit added. In this case, the Southern Pacific Company sold transportation to itself at a profit. This profit became a charge to the capital account on which interest during construction was figured. The result of this procedure is to pile up capital charges where no actual and bona fide cash expenditures were made and no corresponding values were created.

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The engineering department has submitted for the consideration of the Commission three different bases on which such transportation charges can be assessed. These bases are as follows:

Base A—Charges at tariff rates over foreign lines and company's lines and lines under construction.

Base B—Charges at tariff rates over foreign lines and company's lines to the initial point on line under construction. Then, over line under construction at flat-passenger mile and ton-mile rates covering only actual cost of transportation with no profit to the company.

Base C—Charges at full commercial tariff rates on foreign lines. Then, over company's lines to point of destination at flat-passenger and ton-mile rates, covering cost of transportation only with no profit to the company.

Base "A" is the method used by the Southern Pacific Company in this case and results in the highest possible charge. Base "B" was submitted tentatively to the Commission by the engineering department for purposes of comparison. Base "C" is the method usually used by railroad companies in assessing transportation charges to construction accounts and is the basis adopted by the engineering department in its final report now before us. This results in lower charges than either Base "A" or Base "B." A comparison of the results obtained by the use of the three bases in this case will best serve to show the differences between the three methods.

Item	Base A	Base B	Base C
Men.			
Number of passengers hauled one mile	6,094,499	6,094,499	6,094,499
Average rate per passenger mile	$.03358	$.02444	$.01
Total amount	$204,703 38	$148,980 67	$60,944 99
Amount per mile of constructed road	1,434 16	1,044 10	427 14
Material.			
Number of tons hauled one mile	46,750,000	46,750,000	46,750,000
Average rate per ton mile	$.02763	$.01917	$.0077
Total amount	$1,291,772 49	$896,097 40	$359,975 00
Amount per mile of constructed road	9,053 65	6,280 40	2,522 95
Total men and material	$1,496,475 87	$1,045,078 07	$420,919 99

The difference between bases "A" and "C" is	$1,075,555 88
Per mile	7,537 72
The difference between bases "B" and "C" is	624,158 08
Per mile	4,374 41

It will be noted that both bases "A" and "B" rest on the assumption that it is proper for the company to sell transportation to itself at a profit and to charge this profit to the capital account. This profit, taken by itself, is an important item in the total cost of this road. The company, however, does not stop there. It carries this profit forward

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and charges interest on it. This interest is, of course, also a charge to the cost of construction and to the capital account. It is clear to us that here is a serious duplication of charges on all of which the company may ultimately claim a "fair return on the investment."

It is at this point that the company's disposition of earnings during construction assumes importance. Under the terms of the lease of this line to the Southern Pacific Company of July 1, 1909, referred to heretofore, this road was taken over by the Southern Pacific Company's operating department in sections as fast as each portion was ready for handling traffic, and a great deal of commercial freight moved over the completed sections. In order to determine what this disposition was, the company was requested to furnish the Commission with a statement of earnings and operating expenses. This statement was made in detail by months and covered the period from October 20, 1908, to October 31, 1910. Condensed, it results in the following figures:

Operating revenue:		
1. Freight revenue	$505,641 38	
2. Passenger revenue	175,783 51	
3. All other revenue	9,148 83	
Total		$690,573 72
Operating expenses:		
1. Maintenance of way and structures	$32,832 64	
2. Maintenance of equipment	55,507 19	
3. Traffic expenses	8,281 62	
4. Transportation expenses	90,791 10	
5. General expenses	12,628 82	
Total		200,041 37
Net income from operation		$490,532 35

This entire income, it appears, was absorbed by the Southern Pacific Company. The business was extremely profitable, with an operating ratio as low as 29 per cent. I quote from a letter of January 22, 1913, written by the vice president and chief counsel of the Southern Pacific Company, William F. Herrin:

> "It will be noted that the operating expenses reflected appear low as compared with the earnings, which is no doubt due principally to the fact that the expenses for maintenance of the newly constructed line would necessarily be nominal, and practically no yard switching expenses and small station expenses, etc., compared with mileage, while the tariff rates were comparatively high, local commercial freight rates being assessed and passenger rate of 5 cents per mile."

We are questioning the justice of the Southern Pacific Company's method regarding the disposition of the Nevada and California Rail-

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way Company's earnings during the period of construction. The following facts stand out:

1. The Southern Pacific Company created the Nevada and California Railway Company as a "distinct and separate corporate entity" and, when it comes to the justification of the transportation charges, lays stress upon this point.

2. Construction between Mojave and Owenyo was commenced in March, 1908, primarily in order to secure the profitable business developed through the building of the Los Angeles aqueduct. The Nevada and California Railway Company, however, although a corporate entity, was not a party to these profits. They went entirely to the Southern Pacific Company.

3. Not only had the Nevada and California Railway Company no share in the earnings from commercial traffic, but the parent company assessed against its offspring full commercial tariff rates for the haul of all men and material needed in the construction of the road and appropriated the entire profit. The earnings from this business constitute a considerable portion of the total net income shown above.

4. The Southern Pacific Company charged the Nevada and California Railway Company interest at 6 per cent per annum on all expenditures charged to capital account from April 1, 1908, to June 30, 1910. Interest, consequently, was also charged on the profits made from transporting company freight.

This arrangement resulted in the subsidiary company decidedly getting the worst of it. An independent concern would not have become a party to a contract such as the lease of July 1, 1909, and the appropriation of the Nevada and California Railway Company earnings by the Southern Pacific Company *prior* to July 1, 1909, seems to have no justification at all. To arrive fairly at the actual cost to the Southern Pacific Company of the construction of the road under consideration, it should be assumed, in our opinion, *either* that all construction transportation between Mojave and Owenyo be charged to capital account *at cost*, with no profit added, *or* that all earnings from this source be credited to Account 35. Earnings from commercial traffic handled during the construction period should go into Account 35 in either case.

The attorneys for the company argued, as did also the attorneys for The Atchison, Topeka and Santa Fe Railway Company, that it is entirely proper for a railroad company to charge transportation at commercial tariff rates over its own lines and its lines under construction and to enter such book charges in the capital account as part of the cost of road and equipment. In support of this argument they state that it is a general rule in the determination of value of any commodity that its market value at its place of origin plus the market value of transportation from such place of origin to the place of its

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ultimate destination and use, is the market value or fair value at its ultimate destination. As to the statement of the Commission's witness that he did not "think it just that the Southern Pacific Company should sell transportation to itself at a profit and to charge this profit to capital account," the company's attorney disposes of this reasoning by making another statement, viz: that "this is the kind of a statement which, through constant repetition, acquires the masquerading habit of a maxim and passes as such. And all because nobody has sought to analyze it." We are, however, not at all convinced by this disposition of this matter. The company makes the broad argument that the value of a commodity is made up in a large degree of the sum of the cost of the service in producing, preparing and transporting the commodity. The company argues, for instance, that the fair value of a ton of rails is precisely the same at Los Angeles, or at San Francisco, regardless of whether the Southern Pacific Company had little or much to do with transporting it there.

We quote from the company's brief:

> "It would have precisely the same fair value if fetched by the Santa Fe as if fetched by the Southern Pacific; and just as much fair value if fetched by the Southern Pacific only from Odgen as if fetched by it from El Paso. And having the same fair value, however transported, it is clear enough that its fair value would be the same to whoever used it."

We have no fault to find with this argument. But the point is that we are not attempting to ascertain, and neither did the Commission's engineering department attempt to ascertain, the ultimate fact of the "fair value" of this property. We are now proposing merely to determine the "original cost" as that term has hereinbefore been defined. Cost and value, of course, are two entirely different things. The use of these terms interchangeably always leads to confusion and loose thinking. As soon as this difference between cost and value is explained and understood, it appears to us that the entire argument of counsel for the company falls to the ground. It is only necessary to consider an extreme case to show the absurdity of the contention that a finding either of value or cost should include in all cases full tariff rates on the physical property. This line was built as a part of a through line and very little traffic originates upon it. If it were the intention of the Southern Pacific Company to make the book cost as large as possible with the view that possibly in the future its rates would be based on such figures, it could easily be done by placing such rates on the construction material to be used in the railroad, and not in the aqueduct construction, as would make the cost and value of this property, from transportation alone, double or triple the cost, as it has been heretofore

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defined. The Southern Pacific Company made its own rates for the commodities which are involved in this appraisal. There was no check upon them, and even under the present Public Utilities Act there would be no check upon them unless special attention were called to their unfairness. It must follow that only the modesty of the Southern Pacific Company prevented the item of transportation from being 99 per cent of the cost of the line instead of the 47 per cent which the company actually reported. It is reasoning in a circle to state that value, upon which rates may be based, depends on rates which were once in effect regardless of their justice and equity. We believe that there may be certain proceedings in which, to have all of the elements of value considered, it would be entirely proper to place some weight upon the cost of transportation at tariff rates, but we can not conceive of such a necessity unless the railroad considered is in competitive territory. However, we are in this case not concerned with the *use* of this appraisal; and although it would seem self-evident that the cost to the company must include no profits, we shall discuss the phrase "actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's Classification," for the purpose of ascertaining whether or not that classification has been followed, and in order that there may be no doubt that such findings of "original cost" as we may make will come under the definition of that cost as previously stated.

The company justifies its methods by the Interstate Commerce Commission's accounting rules and by statutory provisions, which prohibit the giving of reduced rates to contractors engaged in construction work for common carriers. We have looked into both the law and the Interstate Commerce Commission's regulations on this point.

It is a well known fact that practically all contracts entered into between railroad companies and contractors for the building of extensions, either as part of the old system or as a new line under a new name, provide that men and material will be transported over the lines of the contracting company at much less than regular tariff rates.

In the case of the *Santa Fe, Prescott and Phoenix Railway Company* vs. *Grant Bros. Construction Company,* 207 U. S. 175, the railroad entered into a contract for the construction of certain lines of railway, and included in the contract were provisions for the hauling of supplies for the contractor over the main lines of the Santa Fe Railway coast lines at 1 cent per ton per mile, which rate was also to apply on the line of the Santa Fe, Prescott and Phoenix Railway Company, the contracting party. Provision for carrying passengers for the contractor at 1 cent per passenger mile was also made for both the Santa Fe, Prescott and Phoenix Railway Company and the Santa Fe Company's coast

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lines. These rates were admittedly lower than the regular tariffs governing commercial shipments. The contract further provided that after certain work was done, men and supplies should be hauled free on the newly constructed line on which the contractors were working.

The contractor brought an action against the railroad to recover damages to property destroyed by fire. The contract, among other things, provided that certain reduced rate transportation over affiliated lines of the contracting company, as well as over its own line, would be granted on the express condition that the railroad assumed no liability for loss or damage to the property transported, and on these grounds the railroad declined to settle. In disposing of the question the court makes a point which we believe worthy of mention, and says:

> "In constructing, improving or repairing its road and in building its extensions and branches the railroad company is providing facilities for its service as a common carrier but, of course, is not acting as such. It may do the work itself if it chooses or it may make it the subject of a contract with another. In the latter case it simply employs a proper agency * * *.
>
> "The haulage via a railroad company of the men, appliances and supplies required by the contractor for the purpose of the construction or improvement to or from the point on its line where the work is to be done is merely incidental to the work itself. The *cost* of such haulage is obviously an item of expense which must be taken into account in fixing the terms of the construction contract, and in providing for it over its own line the railroad company may adjust the matter with the contractor as it sees fit. If it did the work directly it would have to take its employees and the necessary outfit to the place of work and it may undertake to do the like for the contractor, either free of charge or at reduced rates, as they may agree."

Interstate Commerce Commission Conference Ruling 208, subdivision (*c*) is as follows:

> "Nor does the Commission construe the law as preventing a carrier from giving free or reduced rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier, provided such arrangements for free or reduced rate carriage are made a part of the specifications upon which the contract is based and of the contract itself."

In Accounting Bulletin No. 8, of the Interstate Commerce Commission, outlining interpretations of accounting classifications prescribed for steam roads, the following appears in Case No. 476:

> "QUERY. Is it intended that commercial rates or only the actual cost for transporting material for construction and maintenance work over a carrier's own line should be charged?

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"ANSWER: It is intended that only freight charges paid to foreign lines shall be included in the cost of material used in maintenance work. In the cost of material used in additions and betterments work or in construction work shall be included foreign freight charges, and the actual cost (fairly estimated) of transporting the material over the carrier's own line may also be included. The carrier's charges for transportation should be credited to appropriate expense account."

In the above the Interstate Commerce Commisison clearly states that only the actual cost, fairly estimated, of transporting material, shall be included in the cost of construction work. It is true that it states material transported over the "carrier's own line," but we do not see how in this case we can regard the Central Pacific Railway as a separate corporation from the Southern Pacific Company, for while they may be separate corporate entities for legal or other reasons, as far as the public is concerned this railroad system is one institution. If it is to be contended that the rails moved through Los Angeles via the Southern Pacific Company's lines we might urge that the rails could have come through Ogden and followed the line of the Central Pacific Railway through Hazen to Owenyo, in which case the Central Pacific Railway itself would have hauled the rails the entire distance.

In Accounting Bulletin No. 7, of the Interstate Commerce Commission concerning questions which have arisen under the classifications prescribed for electric railways, Case No. 154 says:

"QUERY. Should the cost of hauling track material from the storeroom to the place where it enters into construction be regarded as a part of the labor cost covered by Account No. 11, 'track laying and surfacing,' in the classification of expenditures for road and equipment of electric railways?

ANSWER. Yes."

In the above case the cost of hauling track material from storeroom to the place where it enters into construction is regarded as a labor cost. It would seem to make no difference what the length of haul might be. If the haulage is to be considered a labor cost it is apparent that the railroad is entitled to no profit thereon and to charge commercial freight rates would be including whatever margin of profit exists in the commercial freight rates.

The Interstate Commerce Commission has issued a classification for expenditures for road and equipment in accordance with section 20 of the Act to Regulate Commerce, and all through its classification provision is made for the various railroad materials transported to include,

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among other things, "the cost of transportation." Account 32 of the classification is as follows:

"TRANSPORTATION OF MEN AND MATERIAL.

To this account should be charged the fares of laborers and freight charges on material, outfits, and supplies employed in construction work paid by the railway company and properly chargeable in expenditures for road, but which can not be correctly charged under any other construction account. This account may include such items as fares of contractors, their walking bosses, paymasters, clerks, and storekeepers; of labor agents; of men hired by labor agencies and shipped out on the line who may be employed on any character of work; freight on powder, dynamite, and other explosives, hay, grain, groceries, and other supplies for contractors, stores to be sold to subcontractors, station men, laborers, and others; and other analogous items."

The above, in our opinion, clearly states that fares of laborers and freight charges on material employed in construction work paid by the railway company are properly chargeable to expenditures for road. It can not be urged that the railroad pay the full tariff rate, except in case of a foreign line, especially when the contracts provide that the contractor shall receive certain reduced rates for his men and material and figured on these reduced rates when submitting bid for the work. Account 35 of the classification is as follows:

"EARNINGS AND OPERATING EXPENSES DURING CONSTRUCTION.

To this account should be charged the cost of operating a piece of road while in charge of the construction department and before it is opened for commercial operation. It includes the cost of running construction, material, or other trains when the cost of operating such trains can not properly be charged to any specific account. To this account should be credited amounts collected for rents of buildings and other properties and for the transportation of commercial freight or passengers on construction, material, or other trains."

In this section it is specifically provided that the earnings during construction period of a road before the same is turned over to the operating department shall be credited against *cost* of operating construction trains.

The references made to the Interstate Commerce Commission's accounting rules are based on the classification of expenditures for road and equipment, first revised issue of 1909, which were in effect when this road was built and when the valuation of the line was made by the Commission's engineering department. If, after the quotations of those references there could still remain any doubt as to the actual intent of the Commission, such doubt will be removed by an inspection

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of the Commission's new classification of investment in road and equipment of steam roads, effective July 1, 1914. Here the Commission states clearly that a carrier's books should show the actual *cost* of work and material and not assessed book or tariff charges. We shall quote the principal definitions:

> "*Construction* includes all processes connected with the acquisition and construction of original road and equipment, road extensions, additions and betterments.
>
> *Basis of charges.* The charges to the accounts of this classification shall be based upon the cost of the property acquired. When the consideration given for the purchase or the improvement of property the cost of which is chargeable to the accounts of this classification is other than money, the money value of the consideration at the time of the transaction shall be charged to these accounts, and the actual consideration shall be described in the record in sufficient detail to identify it. The carrier shall be prepared to furnish the Commission, upon demand, the particulars of its determination of the actual cash value of the consideration, if other than money.
>
> *Cost of construction.* It is intended that the accounts for fixed improvements and equipment shall include the cost of construction of such property. The cost of construction shall include the cost of labor, materials and supplies, work-train service, special machine service, transportation, contract work, protection from casualties, injuries and damages, privileges, and other analogous elements in connection with such work. The several items of cost here referred to are defined as follows:
>
> (*a*) *Cost of labor* includes the amount paid for labor expended by the carrier's own employees, including the cost of labor expended for preliminary work, such as sinking test holes or making soundings for tunnels, grading, buildings, and other structures; and cost of labor expended in laying and taking up tracks for temporary use in construction, except the cost of labor expended on tracks provided for the protection of traffic during the progress of addition and betterment work. Office expenses and traveling and other personal expenses of employees, when borne by the carrier, shall be considered a part of the cost of labor, as shall also the cost of fidelity bonds and employers' liability insurance premiums. When officers or employees are specially assigned to construction work, their pay and their traveling and incidental expenses while thus engaged shall be included in the cost of the work. No charge shall be made against road and equipment accounts for the pay of officers who merely render services incidentally in connection with extensions, additions, or betterments, although traveling and incidental expenses incurred by such officers solely on account of such work shall be included in the account to which the cost of the work is chargeable.
>
> (*b*) *Cost of materials and supplies* includes the purchase price of materials and supplies, including small tools, at the point of free delivery, plus the costs of inspection and loading assumed by the carrier; also a suitable proportion of store expense. (See

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special instructions for operating expense accounts, sections 16 and 17.) In calculating the cost of materials used, proper allowance shall be made for the value of unused portions and of cuttings, turnings, borings, etc.; for the value of the material recovered from temporary tracks, scaffolding, cofferdams, and other temporary structures used in construction; and for the value of small tools recovered and used for other purposes.

(c) *Cost of work-train service* includes amounts paid to others for rent and maintenance of the equipment used; cost of labor of enginemen, trainmen, and enginehouse men, including the wages of engine crews and train crews held in readiness for such service; and the cost of fuel and other supplies consumed in connection with the operation of work trains. It shall also include the cost of maintaining the carrier's own equipment while used in construction service and a fair rent for such equipment while so used. Amounts charged for rent of such equipment used in construction shall concurrently be credited to the appropriate income account for hire of equipment. No 'rent' or return upon the investment in such equipment shall be charged for the use of equipment acquired with the proceeds of securities sold, when the interest upon such securities is charged to the accounts of this classification.

(e) *Cost of transportation* includes the amounts paid to other companies or individuals for the transportation of men, materials and supplies, special machine outfits, appliances, and tools in connection with construction. Freight charges paid foreign lines for the transportation of construction material to the carrier's line shall be included, so far as practicable, as a part of the cost of the material, when such charges are borne by the carrier. A fair allowance representing the expense to the carrier of such transportation in transportation service trains over the carrier's own line also shall be included. When the cost of such transportation is not assignable to specific work, it shall be included in Account No. 43, "other expenditures—road." Amounts thus charged for transportation in transportation service trains over the carrier's line shall be credited to operating expense general account VIII, transportation for investment—cr."

The accounts "transportation of men and material" and "rent of equipment" in the new classification are done away with and are taken up in Account 43, "other expenditures—road," which is classified as follows:

"This account shall include items which can not properly be included in any of the foregoing accounts as a part of the cost of any specific work, such as the cost of transportation of men, materials, supplies, and equipment over the carrier's own line; amounts paid for rent and repairs of equipment and for injuries to persons incident to and in connection with original road, road extensions, or additions and betterments; and analogous items.

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When assignable, such expenditures shall be included in the cost of the property in connection with which the expenditure occurs."

NOTE.—Rents paid for and repairs made to equipment used in commercial operations during the period before the regular operation of revenue trains shall be charged to Account No. 40, "revenues and operating expenses during construction."

After a thorough consideration of the facts and of the law in this matter, we are of the opinion that it was improper for this company to charge to the capital account, under cost of road and equipment, any sums in excess of the actual cost in cash of transportation of men and material for construction purposes. We are further of the opinion that it was improper for the company to divert any earnings, and find that all earnings should have been credited to the cost of the road. It is, however, impossible at this time to determine what these earnings actually were.

It appears to us that the importance of this matter is far reaching. If carriers throughout the country are permitted to increase their capital investment figures by the charging of tariff rates on all new construction, addition and betterment work, and if the valuations of the common carriers now being made by the Interstate Commerce Commission are to be predicated on this basis and rates are to be made with this valuation as a foundation, the people of the United States will ultimately have to pay interest on hundreds of millions of dollars, not a cent of which will represent actual cost of property.

Having found that the proper basis for transportation charges under the head of original cost, is the actual cost of transportation to the owner of the line under construction, there remains the question: What is the actual cost to the carrier of the hauling of construction men and material? It is clear that a mathematically exact answer, in the nature of the matter, can not be given. Average unit figures must be found and applied.

The engineering department has used, for this line, the unit of 7 mills per ton mile and 1 cent per passenger mile, and is applying these same units to similar construction throughout the State.

A mass of operating cost data is available, but it is not easy to arrive at comprehensive and fair averages. We have no unit ton mile or passenger mile data covering cost of transportation of men and materials on roads during construction. For these reasons, any adopted flat rate should be liberal. It is well known that almost all western roads, and probably most roads in the country, in making cost estimates of proposed work figure transportation over company's rails at ½ cent per ton mile and 1 cent per passenger mile. The Southern Pacific Company, in the revaluation of its old lines, uses these figures, to a large extent, at least. The Western Pacific Railway Company, for all

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estimates during the construction period, used these rates exclusively and irrespective of whether the territory traversed was valley, mountain or desert.

The engineering department of the Commission makes a difference as between cost of transportation of material in valley and in mountain country, and to that extent has been more liberal than the railroads themselves. For valley, 5 mills per ton mile and for mountains or mountainous desert, 7 mills is allowed. We believe that this distinction is justified by the facts and that these allowances are ample and fair.

In support of this assertion we are taking from the annual reports of the carriers the following operating figures, which, when correctly interpreted, will substantiate the above flat rates. The figures are averages for the three most important railroads in this State, and take into consideration all possible conditions:

Average Passenger Mile and Ton Mile Receipts for the Year 1912.

Road	Average passenger mile receipts	Average ton mile receipts, all freight					Operating ratio	
		Intra-state	Inter-state	Grain	Lumber	Coal	Intra-state, per cent	Inter-state, per cent
S. P. Co. lines	$.02130	$.01857	$.01352	$.0162	$.0186	$.00776	60.14	57.40
A. T. and S. F.	.02274	.01985	.01213				63.98	64.18
Western Pac..	.01941	.02128	.00910	.0043	.00829	.005	80.44	

The above table shows the average receipt from *all* commercial traffic, including, of course, the profits to the carrier. It will be noted that the receipts for the average passenger mile are in the neighborhood of 2 cents. The average ton mile figure for both interstate and intrastate traffic is 11 mills. The operating ratio averages 68 per cent, a figure which is above normal on account of the unusually high ratio of the Western Pacific. On this basis the operating cost per passenger mile is 13 mills, and per ton mile 7½ mills. The important fact should not be overlooked that the above figures are averages for all traffic, both high-grade and low-grade, and both carload lots and less-than-carload lots. A very large percentage of railroad construction material is low-grade freight (grading outfits, ties, rails, steel, cement, lumber, stone, sand, gravel, etc.), and nearly all moves in carloads. If averages for such freight only were figured, they would be much lower than those given above. It is not necessary for our purpose, however, to do this.

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The above 13 and 7½ mills per passenger mile and per ton mile, respectively, represent the cost of operating expenses. Operating expenses include the following expenditure accounts:

1. Maintenance of way and structures.
2. Maintenance of equipment.
3. Traffic expenses.
4. Transportation expenses.
5. General expenses.

"Operating expenses" do *not* include interest, dividends, taxes, reserves and charges to profit and loss account.

The above 5 general operating expense accounts are again subdivided into 116 secondary accounts. The point we wish to bring out is that a considerable portion of the above "operating expenses" which are paid out of the 13 and 7½ mills, should be deducted, when determining the cost of transportation over a line under construction, for our purpose. Deduction should be made for the reason that all deducted items of expense are considered in a valuation, not under account "transportation of men and material," but elsewhere. The Interstate Commerce Commission reports show the relative importance of each of the 116 operating expense accounts on a percentage basis, and the following statement is deducted from this data. The statement shows what items should be deducted, where in valuations they are taken care of, and the amount of deductions expressed in per cent of total operating expenses:

For Valuation Purposes.

Deduct	Acct. No.	Allowed under valuation	Acct. No.	Per cent
I. *Maintenance of Way and Structures.*				
Superintendence	1	Engineering	1	0.957
Roadway and track	6	Tracklaying and surfacing	12	7.531
Removal of snow, sand and ice	7	Other expenditures	48	0.465
Injuries to persons	19	Injuries to persons	35½	0.106
Stationery and printing	20	Stationery and printing	44	0.040
Other expenses	21	Other expenditures	48	0.018
Maintaining joint tracks, etc.	22	Tracklaying and surfacing	12	0.681
Total				9.798
II. *Maintenance of Equipment.*				
Superintendence	24	Engineering	1	0.643
Steam locomotives—renewals	26	Steam locomotives	37	0.184
Passenger train cars—renewals	32	Passenger train cars	39	0.090
Freight train cars—renewals	35	Freight train cars	40	0.697
Electric equipment—renewals	38	Electric equipment	37	0.002
Floating equipment—renewals	41	Floating equipment	42	0.003
Work equipment—renewals	44	Work equipment	41	0.042
Injuries to persons	48	Injuries to persons	35½	0.077
Stationery and printing	49	Stationery and printing	44	0.055
Other expenses	50	Other expenditures	48	0.047
Total				1.840

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For Valuation Purposes—Continued.

Deduct	Acct. No.	Allowed under valuation	Acct. No.	Per cent
III. *Traffic Expenses.*				
Superintendence	53	Traffic expenses of this nature do not occur during construction period.		0.783
Outside agencies	54			1.099
Advertising	55			0.468
Traffic associations	56			0.085
Fast freight lines	57			0.224
Industrial and immigrant	58			0.052
Stationery and printing	59			0.363
Other expenses	60			0.007
Total				3.081
IV. *Transportation Expenses.*				
Superintendence	61	Engineering	1	1.198
Weighing and car service association	64	Do not occur		0.134
Stationery and printing	97	Stationery and printing	44	0.455
Other expenses	98	Other expenditures	48	0.117
Loss and damage—freight	99	Do not occur during construction.		1.220
Loss and damage—baggage	100			0.020
Damage to property	101			0.269
Damage to stock	102			0.206
Injuries to persons	103	Injuries to persons	35½	1.129
Total				4.748
V. *General Expenses.*				
Salaries and expenses of general office	106	Are carried in construction accounts either under Account 1, Engineering, or Account 48, Other Expenditures.		0.516
Salaries and expenses of clerks, etc.	107			1.411
General office supplies, etc.	108			0.185
Law expenses	109			0.608
Insurance	110			0.424
Relief Department expense	111			0.038
Pensions	112			0.160
Stationery and printing	113			0.160
Other expenses	114			0.169
General administration, etc.	115			0.037
Total				3.661
Grand total, deductions				23.128

A number of other deductions might be made and, under certain conditions, should be made. Where original cost is available and charges have been made (as is the case with Southern Pacific lines) to construction account 34, repairs of equipment, it is clear that we have a duplication of charges if we allow repairs again under "Operating Expenses" as a portion of "Cost of Transportation." Such repair charges, on the same basis as used in the table above, amount to 19.258 per cent of the total operating expenses. We have, however, deducted *only* such items which, without doubt, are duplications or do not occur during construction. All items which could be considered as maintenance charges or as offsetting depreciation are assumed to be operating

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expenses for our purpose. It will be noted that the total deductions, without the repair accounts, amount to 23.128 per cent, or say 23 per cent.

This would reduce the operating costs as follows:

Operating Cost per Ton Mile
equals 7½ mills × (100–23%),
equals 7½ mills × 0.77 = 5.775 mills.
Operating Cost per Passenger Mile
equals 13 mills × (100–23%)
equals 13 mills × 0.77 = 10.010 mills.

As to the ton-mile rate, it has been shown, and would not be difficult to prove, that the flat figure above is still high and certainly quite liberal to the carrier. It does not seem necessary, however, to pursue the subject further, since the figures of 5 and 7 mills per ton-mile in level and mountainous territory, respectively, seem fair and their sufficiency amply justified. An attempted further reduction could probably be shown to be offset by the higher cost of operating during construction due to necessarily lessened efficiency with which trains can be operated and due also to the indifferent and limited amount of equipment on hand for use during the construction period.

The cost of moving one passenger, one mile, on our basis, is approximately 1 cent, the figure it is proposed to use. Here, again, it should be understood that, for handling men during construction, this rate could readily be shown to be high. The 1 cent pays for transportation in first-class fast passenger trains running on schedule and every day in the year. It pays for the handling of baggage and for the cost of station service and station upkeep and for overhead expenses. The difference between this kind of service and makeshift service on construction trains in freight cars and cabooses is apparent, so that here, too, there seems to be no necessity for further investigation.

The last large item of difference between the company and the engineering department in the original cost of this line is in the charge of interest. The valuation as made by the Southern Pacific Company originally had no charge to this account. After the company's attention had been called to it, the interest charge against the road was furnished by the New York office and proved to be $336,955.99, equal to 6.58 per cent on accounts 1 to 46, inclusive, on the company's valuation. Interest was charged from April 1, 1908, to June 30, 1910, at the rate of 6 per cent per annum, compounded annually. Subsequent to June 30, 1910, interest charges were assumed by the operating department. The interest charge of $266,996.67 shown under original cost in the engineering department's valuation is less than the amount shown by the company by nearly $70,000. The department has retained the 6 per cent rate, but the principal is less than the figure used by the

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company by reason of the changes in original cost herein set forth. In the department's report the interest calculation by months on the money invested on construction is shown in detail, and we are accepting these figures.

We find that the original cost, as this term has heretofore been defined, and not considering any earnings during construction, of operative property of that portion of the Central Pacific Railway between Mojave, Kern County, California, and Owenyo, Inyo County, California, 142.68 miles, and formerly a part of the Nevada and California Railway Company, as of June 30, 1912, is the sum of $4,357,216.01.

5. Reproduction Cost.

The company, in its valuation filed with the Commission, made no estimate of reproduction cost, maintaining that this item would be equal to the original cost. In the engineering department's valuation the road is reproduced in kind regardless of original cost and on the basis of prices as of June 30, 1912. The base of men and supplies is Los Angeles. The engineering department's first report, Exhibit "B," estimated the reproduction cost at $4,178,760.73. After the attention of the department, during the hearing of the case, had been called to certain errors and misunderstandings, its report was revised as now before us, and the total reproduction cost is here shown as $4,196,926.77. (See Exhibit "C.") It is not practicable to compare the individual accounts in the two exhibits referred to. The principal reason for this is that the transportation account does not appear in the reproduction cost estimate as a single item, as all transportation charges are absorbed in the unit prices and enter directly into each account. The reproduction cost of transporting construction men and material in the department's original valuation was based on market prices f. o. b. California terminal points plus transportation at commercial tariff rates to Mojave, the initial point on the road under construction, and plus flat rates over the line under construction to the point of destination. In the revised report the base is market price f. o. b. California terminal points plus transportation at flat rates over the company's lines to the point of destination on the line under construction. The latter method, in our opinion, is the proper one to be used. We have stated our reasons heretofore under the heading "original cost."

No other objections were made by the company to the methods and unit prices adopted by the department and its reproduction cost estimate of this property.

It appears to us necessary, however, to examine somewhat closely into the methods used by the engineering department in the valuation of lands and rights of way of the company. The operative right of way is appraised at $34,959.94, which amount is relatively unimportant in this

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case as compared with the total reproduction cost of the property. The principles involved in determining the value of right of way, however, are at this time assuming vast importance.

The method adopted by the engineering department in its first report was the "cost to reproduce," and led to the application of a so-called "right of way multiple." In this case this multiple is 1.50 of the market value of the land. There is further added to this so-called railroad value 12½ per cent as interest during the construction period. The department, in following this method, also usually adds over and above the multiple and the interest allowance another percentage allowance for the "cost of acquisition," which is supposed to cover engineering expenses, legal expenses, and the expenses and salaries of the right of way agent, etc. The company used original cost for right of way values in its appraisal. It so happens, on account of the recent acquisition of this right of way, that the reproduction cost is approximately equal to the market value, excluding interest, however, which item is included elsewhere by the company in the valuation. Ordinarily there will be found a great difference between these two items of value.

Since this appraisal was made the United States Supreme Court has handed down its decision in the so-called *Minnesota Rate Case,* in which case the court disapproves of the "cost to reproduce" theory of fixing right of way valuations, and instead allows only the market value of the lands, based on the market value of similar lands in the community. This method introduces a third theory of valuing right of way, and the engineering department's revised report follows the Supreme Court decision and gives the so-called market value of the lands and rights of way. (See Exhibit "C.") As stated above, the question arising out of these various methods is not important in this case, the difference between reproduction cost and market value of right of way of this road being only $14,242.94, but in appraising all of the right of way owned by this carrier in this State the difference in methods will mean some $50,000,000.00.

We propose to examine into the various methods considered by the company and by the engineering department.

There is first the so-called "original cost" method. This method was used by the company in this case and means simply the adoption of the actual cost or investment as the value of the property. This same method has been adopted on all of the Southern Pacific Company's recently constructed lines wherever the cost was available. Where lands were donated there has been no claim made by the company for value, although the Interstate Commerce Commission accounting rules now appear to permit the capitalization of donated property. In one case now under investigation by the Commission 97 per cent of the right of way was donated and the cost to the company was only slightly

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above $600.00. The market value of this right of way was in the neighborhood of $7,500.00 at that time. Yet the company claimed only original cost. On the electric lines in Alameda County the company acquired with its right of way a large amount of nonoperative lands. For appraisal purposes it has claimed the value of the right of way at original cost less the present market value of the "salvage" or nonoperative lands. On lands owned for longer periods, the cost of which is apparently unknown, the company uses the reproduction cost method, explained below, using a multiple varying from 1 to 4. On oil lands the company uses one-tenth of the market value of oil-bearing lands or what might be called the mineral value. These varying methods show how conflicting is the problem of right of way valuation and how convenient a standardized, universally accepted method would be.

The second method, or the so-called "reproduction cost" method, involves the determination of the market value of the right of way based on the market value of adjoining or similar lands, and this market value is increased by applying the so-called right of way multiples in order to obtain the so-called "railroad value" or reproduction cost. To this amount are usually added certain percentages to allow for cost of acquisition and interest during construction. In the appraisal of this road a multiple of 1.50 was used and 12½ per cent was added for interest during the construction period. The general rule of the Southern Pacific Company in its valuations is to apply multiples varying from 1 to 4, and to further add overhead charges.

The third theory is based on the so-called "market value" method, as defined by the United States Supreme Court in the cases referred to. This method allows only the market value of right of way based on the average market value of adjoining lands. It eliminates multiples and all allowances for cost of acquisition, contingencies, interest and overhead expenses. The court says:

> "The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved; and, in this view, we also think it was error to add to the amount taken as the present value of the lands the further sums, calculated on that value, which were embraced in the items of 'engineering, superintendence, legal expenses,' 'contingencies' and 'interest during construction.'"

Since the date of this decision, in June, 1913, this method of appraising lands has been adopted by many appraisal engineers, experts and state railroad commissions. The Public Utilities Commission of Washington has rescinded all its former valuations where right of way multiples were employed and now allows only the market value of lands. It is also significant that in the instructions pertaining to land appraisals of railroads recently issued by the Interstate Commerce Commission,

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no reference whatever is made to multiples or the multiple theory, and no instructions are given for the compilation of any data that could be used to arrive at a so-called "railroad value." These instructions refer only to the "present value" of carrier's land. Whether this Commission should adopt this method is one of the important principles involved in this case.

Applying the above three methods to the lands in the case before us, we find that the original cost method gives a total of $31,240.53, and the reproduction cost method totals $34,959.54, including interest, and the market value method gives a total of $20,717.00.

The question is raised by counsel for The Atchison, Topeka and Santa Fe Railway Company as to the propriety of including donated lands in determining right of way multiples. The engineering department has found in investigating the recent construction of some 1,200 miles of railroad in California that approximately 40 per cent of the right of way area was donated either by individuals, real estate companies, municipalities, the State, or the United States government. Of all the donated lands 75 per cent was unpatented land granted by the government. In this State the multiple would not seem to be materially affected by the inclusion or exclusion of donated lands one way or another. In the engineering department's report full value is allowed the company for its land acquired by donation.

We have stated in the first pages of this opinion that no findings will be made on the ultimate or fair value of this property for any particular purpose and that certain definite elements of value only are to be ascertained. Keeping this statement in mind, we are of the opinion that our purpose is accomplished if all the material facts entering into this valuation proceeding are clearly set forth. If this valuation should become material in a rate case, for instance, or in a securities case, or in any other proceeding, the Commission will have before it most of the data from which it can form an intelligent opinion of the "fair value" for the particular purpose at issue. The Commission will be in a position to accept or reject the "multiple" or any theory as it may see fit. It is sufficient to state here that in the reproduction cost of this property, as it will be found by us, the values placed on land do not include a right of way multiple, and no allowance for interest or other arbitrary allowances, as explained above.

The company has inquired as to the Commission's bases and methods for allowing the so-called overhead expenses, and we shall state briefly what was done. When all the items of physical property are listed in an appraisal there remain to be cared for certain items of expense in connection with the securing and placing of the physical elements. These items are of a nature to make it difficult, if not impossible, to

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charge them directly to the accounts for which they were incurred, and the engineering department has followed the usual custom of adding to the values found for the tangible property certain percentages to cover them. In this particular appraisal a variation of 1 per cent in the sum of the overhead percentages would increase or decrease the values found about $40,000.00, and it becomes of some importance to consider the reasonableness of the various percentages used by the department. It should be borne in mind that these percentages are arbitrary. In this instance we are considering the first unit of the Southern Pacific system in this State, and to be consistent, we should use the same overhead percentages here, where they are, in general, actually known, as will be used in valuing those lines where they are not known and must be entirely estimated.

The overhead expenses allowed by the engineering departmest cover engineering, law expenses, interest and other expenditures, and amount to $483,849.73, or over 12 per cent of the total reproduction cost of the accounts on which they have been figured. They have been extended from reproduction cost to reproduction cost less depreciation at 100 per cent, and we will later discuss the propriety of not considering appreciation or depreciation as affecting them.

Engineering has been estimated at 5 per cent, although, as the original cost shows, three per cent of the accounts on which the percentage was figured covers the actual engineering expenditures. Data as to the cost of engineering is not difficult to obtain, and our engineers have on record cost data on this and other roads, as well as the figures found by other commissions as being reasonable and fair percentage to cover this item. We are satisfied that 5 per cent is a liberal allowance to cover this account.

Law expenses are included at 1 per cent of reproduction cost, and other expenditures, which include insurance, taxes, general office expenses, etc., are estimated at one-half of 1 per cent of reproduction cost.

These percentages are based on the composite judgment of a large number of competent authorities and have already been sanctioned by their usage in other valuation proceedings before the Commission.

Interest has been allowed at the current rate of 5 per cent for an actual construction period of two and one-half years, and interest was computed on the assumption that one-half of the total sum on which interest was allowed, would, during this period, be actually expended without returns from completed sections of the road. In other words, the full amount of interest was allowed for one-half the construction period, and the total interest amounts to 6¼ per cent on the reproduction cost.

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All of these so-called overheads, it should be understood, have been figured on the individual accounts to which have been previously added as contingency allowances sums varying from 1 per cent to 5 per cent of that account.

Overhead allowances is a subject concerning which a large latitude of opinion is permissible, for, from their nature, there can be nothing definite and exact about them. The various percentages used by our engineers in this appraisal are the same that have been carefully considered in previous valuation cases and have been accepted by the Commission.

After a careful consideration of all the evidence in this case we find the reproduction cost, as that term is herein defined, of the operative property of that portion of the Central Pacific Railway Company between Mojave, Kern County, California, and Owenyo, Inyo County, California, a distance of 142.68 miles, being a portion of the former Nevada and California Railway Company, as of June 30, 1912, to be the sum of $4,182,683.83.

6. Reproduction Cost Less Depreciation.

The company made no estimate of reproduction cost less depreciation, claiming that this element of value was equal to original cost. The engineering department in its original report (Exhibit "B") reported the reproduction cost less depreciation to be $3,957,015.93. In the report, as at present revised, the same item is stated to be $4,014,956.90. It is unnecessary to discuss here again the reasons for the changes between the original and the present estimates. Wherever the original figures were revised under the heading of reproduction cost, a revision was also necessary in the estimate of reproduction cost less depreciation.

The important point here is the question of depreciation. The company contends that depreciation should not be taken into consideration and that in fact no depreciation has taken place, and that a railroad property may not be allowed to depreciate at all. To us this seems to be an astounding assertion.

Since depreciation plays a conspicuous part in this appraisal, and as used by our engineers was especially questioned by counsel for the company, it is necessary to consider what depreciation is and to determine what application and use it has in this particular connection. In this opinion this can, of course, be only done in the form of an outline.

Much of the confusion which exists on the whole valuation subject is, we believe, caused by lack of a clear comprehension of just what is meant by this term, depreciation. There are two kinds of depreciation as ordinarily considered; one is caused by the action of the elements and the wear to which the facility is subjected. The other is caused by

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the inadequancy or obsolescence of the facility due to developments which have made it incompetent to perform its functions properly or economically. The first of these kinds of depreciation is generally called physical depreciation and the second functional depreciation. A discussion of functional depreciation in this opinion would be entirely academic, since the evidence in this case showed no functional depreciation. Functional depreciation may or may not happen, while physical depreciation (or appreciation) always acts during the life of a facility.

Considering now physical depreciation: There are three viewpoints from which it can be examined and applied, but it is not possible to view this subject consistently in any single appraisal from more than one of these viewpoints. There can be no commingling of the three, and any attempt to do so will inevitably lead to confusion of thought and unsatisfactory and indeterminate results. The first of these viewpoints, for want of a better name, we shall call the market viewpoint. The measure of depreciation from a market viewpoint is the difference between cost and present value, present value being what the facility would bring in an open market when passing from a willing seller to a willing buyer. The second of these viewpoints can be called the investment viewpoint, and represents the investor's side of the question, which is concerned chiefly with keeping the invested capital secure and intact. From this point of view we shall have to deal with proper depreciation reserves and with proper bookkeeping methods. The third point of view we shall call a present ownership and service viewpoint. From this viewpoint depreciation is strictly a function of the life of a facility in its present service and under its ownership and life, and condition, of course, is directly dependent upon weather stress and wear.

The first of these viewpoints is very seldom considered in a railroad appraisal, for the reason that railroads ordinarily are not bought and sold in the open market. The second and third viewpoint are often confused and commingled together in one valuation. From an investment viewpoint, once a facility has been placed, the amount invested remains the same and the investor does not desire to have his investment depreciated. From the third viewpoint depreciation does accrue and must necessarily do so. The counsel for the company has fallen into the error of considering some of the facilities of this company from the "investment viewpoint" and others from the "present ownership viewpoint." For instance, on the one hand he argues that grading and right of way should be given ample appreciation, and on the other hand strenuously contends that since the investment in perishable facilities always remains at 100 per cent, no depreciation can take place. Appreciation and depreciation must take the same treatment.

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In our use of reproduction cost less depreciation, we consider at this time only the third viewpoint, and we would define physical depreciation in a facility, as distinguished from functional depreciation, as the loss in value to the company due to use, age, weather, and to the wear to which the company subjects it.

Counsel for the company has argued that any finding of reproduction cost less depreciation means the depriving of his company of a certain per cent of the money which it has actually invested. A railroad built and placed in service with a 100 per cent investment rapidly depreciates, so that the "reproduction cost less depreciation" becomes, even on the best of maintained roads, not over 90 per cent of new, and probably will average between 80 and 90 per cent. To maintain a railroad above this point is likely to occasion an economic loss of labor and material. If 85 per cent is taken as a measure of a well maintained railroad, it apparently follows that 15 per cent of the capital invested has wasted away. It seems needless to point out once more that we have stated definitely that we are finding certain elements of value in this railroad.

No proceeding in which this valuation can be used as evidence will be complete unless other elements of value not here considered and non-physical assets of the company are taken into consideration; and that proceeding is the proper place to contend that the appreciation of the property as a whole has been great enough to offset the depreciation which has occurred in its component parts. That proceeding is also the place in which to bring up the question of whether any additional consideration should be given to intangible values; and it can then be determined if these items exist in fact and whether they represent values or losses, assets or liabilities. We are concerned here merely with certain elements entering into the physical property, and we can not ignore in the valuation of that physical property the actual fact that visible and tangible deterioration has occurred in most of the various structures and materials which make up the whole property.

This same thing is true regarding the question of taking care of depreciation by providing a sinking fund either on the straight line or any other method. The fact that the company has in its treasury sufficient funds to replace a half worn out tie or that it is obligated by law to maintain that tie, at the expense, if necessary, of the security holders, certainly can not change the physical fact that that tie is half worn out.

Having thus to some extent considered and defined what depreciation means as used in this appraisal, referring exclusively to physical depreciation, it is necessary to examine what methods have been followed by

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our engineers to arrive at a depreciated value. Their procedure has been this: From the cost of the facility new they have deducted the salvage value at the point of usage. The result has been called the wearing value. This wearing value is then divided by the estimated or probable life of the facility, and the quotient has been called the annual depreciation. The actual age of the facility has then been multiplied by this annual depreciation to find the total depreciation. This total depreciation subtracted from the "reproduction cost" has given our engineers what has been called reproduction cost less depreciation, and the relationship which this figure bears to the reproduction cost is called the condition per cent. If, through maintenance, the life of an item of property has been lengthened or its normal condition improved, this fact is also reflected and taken care of in the appraisal by the condition per cent determined from inspection.

Our engineers have in this appraisal depreciated all physical items except the right of way and the grading. Such overhead percentages as have been added to cover engineering, law expenses, interest and other expenditures, have been added merely as the cost of securing and placing the physical items listed in the inventory, but they have been neither appreciated nor depreciated by our engineers in extending them from the "reproduction cost" to the "reproduction cost less depreciation" column, and they have, on strict analysis, not been entirely consistent in this procedure. It might be urged that such items as law expenses, engineering, etc., as are applicable to physical items which have been appreciated or depreciated, should receive the same treatment as do those items. Our engineers, however, have followed their procedure, partly for the reason that the percentages added to cover these overheads are arbitrary, and it would therefore be impossible to make an accurate subdivision for an arbitrary percentage between those facilities which are perishable and those which are not. We get into difficulties and find distinctions not warranted in a proceeding like this one, if we adopt any other course.

The carrying of the overheads from the one value to the other without depreciation or appreciation, undoubtedly is on the side of liberality. We believe, further, that the allowances as figured by our engineers are fair and reasonable, and that the estimated ages of structures have been made in accordance with the probable facts; and we are borne out in these beliefs by the fact that no exception was taken by the company to this part of our engineers' report.

We find the reproduction cost less depreciation, as that term has heretofore been defined, of the operative property of that part of the Central

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Pacific Railway Company between Mojave, Kern County, California, and Owenyo, Inyo County, California, a distance of 142.68 miles, being formerly a portion of the Nevada and California Railway Company, as of June 30, 1912, to be the sum of $4,014,956.90.

Attached to this decision as Exhibit "D," is a comparative statement as between the original cost statement submitted by the company and the Commission's engineering department's revised valuation of December 23, 1914, which also shows the difference between the various items of value as found in this opinion.

Dated at San Francisco, California, this 8th day of December, 1915.

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EXHIBIT "A"—COMPANY'S VALUATION.

Owning company, Central Pacific Ry. Co.; operating company, Southern Pacific Co.; operating division, San Joaquin; from Mojave to Owenyo.

Submitted with report of chief engineer, Southern Pacific Company; date compiled, July, 1912; first track, 142.68 miles; yard tracks, sidings, etc., 28.77 miles; total, 171.45 miles.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost less depreciation
37	--	1	Engineering	$126,709 99	Company		
1	1	2	Right of way and station grounds	31,240 53			
2	2	3	Real estate		claims		
3	3	4	Grading	1,137,517 76			
4	4	5	Tunnels	344,027 68	that		
5	5	6	Steel bridges and trusses	74,333 03			
6	6	6	Pile and frame trestles	65,350 93	"Reproduc-		
7	7	6	Culverts	252,886 96			
8	8	7	Ties	310,803 52	tion Cost"		
9	9	8	Rails	577,693 32			
10	10	9	Frogs and switches	15,019 48	and		
11	11	10	Track fastenings and other material	170,164 93			
12	12	11	Ballast	73,453 31	"Reproduc-		
13	13	12	Tracklaying and surfacing	219,130 72			
14	14	13	Roadway tools	163 59	tion Cost		
15	15	14	Fencing right of way	2,728 97			
16	16	15	Crossings and signs	2,346 60	less		
17	14½	16	Tools	7,909 29			
18	18	16	Signal apparatus		Depreciation"		
19	19	17	Telegraph and telephone lines	1,385 82			
20	20	18	Station buildings and fixtures	6,342 98			
21	21	18	Platforms, walks, paving and curb	721 61			
22	22	19	General office buildings and fixtures		are		
23	23	20	Shop buildings and engine houses				
24	24	20	Transfer and turntables, cinder pits, etc.		equal to		
25	25	20	Miscellaneous shop buildings and structures				
26	26	21	Shop machinery and tools		"Original		
27	27	22	Water stations	65,676 10			
28	28	23	Fuel stations		Cost."		
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	1,674 59			
38	37	32	Transportation of men and material	1,496,475 87			
39	38	33	Rent of equipment	135,068 92			
40	38	34	Repairs of equipment				
41	--	35	Earning and operating expenses during construction	213 20			
42	--	35½	Injuries to persons	50 00			
43	--	36	Cost of road purchased				
44	39	37	Steam locomotives				
45	--	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars				
48	42	41	Work equipment				
49	43	42	Floating equipment				
50	--	43	Law expenses				
51	44	44	Stationery and printing	1,870 10			
52	44	45	Insurance				
53	45	46	Taxes	422 40			
54	--	47	Interest and commission	331,955 99			
55	45	48	Other expenditures	44,416 80			
57	46	--	Stores and supplies on hand for use in California	27,324 63			
			Grand total	$5,530,159 62			
			Average per mile for main track	38,756 45			

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EXHIBIT "B."

Owning company, Central Pacific Ry. Co. (formerly Nev. & Cal. Ry. Co.); operating company, Southern Pacific Co.; operating division, San Joaquin; from Mojave to Owenyo.
Submitted with report of Richard Sachse; date compiled, December, 1912; first track, 142.68 miles; yard tracks, sidings, etc., 28.76 miles; total, 171.44 miles.

Class No.	Form No.	Acct. No. I.C.C.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost less depreciation
37	--	1	Engineering	$126,709 99	$185,494 26	100	$185,494 26
1	1	2	Right of way and station grounds	31,240 53	31,075 50	100	31,075 50
2	2	3	Real estate				
3	3	4	Grading	1,137,517 76	1,111,476 76	106	1,177,134 21
4	4	5	Tunnels	344,027 68	391,838 19	96	376,863 55
5	5	6	Steel bridges and trusses	74,333 03	76,943 70	96	73,724 51
6	6	6	Pile and frame trestles	65,350 93	53,080 55	79	42,107 64
7	7	6	Culverts	252,886 95	286,408 60	95	271,968 74
8	8	7	Ties	330,893 52	450,723 49	68	306,962 86
9	9	8	Rails	577,093 32	673,794 15	92	637,297 78
10	10	9	Frogs and switches	15,009 48	15,548 38	93	14,457 65
11	11	10	Track fastenings and other material	170,161 93	182,631 86	92	166,762 51
12	12	11	Ballast	73,453 31	79,332 00	95	75,549 99
13	13	12	Tracklaying and surfacing	219,130 72	270,872 43	84	233,427 75
14	14	13	Roadway tools	8,072 88	103 59	69	114 51
15	15	14	Fencing right of way	2,728 97	3,304 47	96	3,126 01
16	16	15	Crossings and signs	2,346 60	2,963 94	80	2,377 46
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telegraph and telephone lines	1,385 82	1,385 82	100	1,385 82
20	20	18	Station buildings and fixtures	6,452 40	8,932 42	92	8,208 40
21	21	18	Platforms, walks, paving and curb	721 61	721 61	95	682 52
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses				
24	24	20	Transfer and turntables, cinder pits, etc.				
25	25	20	Miscellaneous shop buildings and structures				
26	26	21	Shop machinery and tools				
27	27	22	Water stations	65,676 10	66,932 75	90	63,187 27
28	28	23	Fuel stations				
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	1,674 59	2,125 56	84	1,776 92
38	37	32	Transportation of men and material	1,045,678 67			
39	38	33	Rent of equipment	135,668 92			
40	38	34	Repairs of equipment				
41	--	35	Earning and operating expenses during construction	*38,921 35*			
42	--	35½	Injuries to persons	50 00	50 00	100	50 00
43	--	36	Cost of road purchased				
44	39	37	Steam locomotives				
45	--	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars				
48	42	41	Work equipment				
49	43	42	Floating equipment				
50	--	43	Law expenses		37,098 85	100	37,098 85
51	44	44	Stationery and printing	1,870 16			
52	44	45	Insurance				
53	45	46	Taxes	422 40	422 40	100	422 40
54	--	47	Interest and commission	365,618 46	245,809 45	100	245,809 45
55	45	48	Other expenditures	44,416 80			
57	46	--	Stores and supplies on hand for use in California				
			Grand totals	$4,981,074 53	$4,178,760 73	95	$3,957,915 96
			Average per mile for main track	34,910 81	29,287 64	95	27,732 96

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EXHIBIT "C."

Owning company Central Pacific Ry. Co. (formerly Nev. & Cal. Ry. Co.); operating company, Southern Pacific Company; operating division, San Joaquin; valuation unit, Nevada & California Ry.; from Mojave to Owenyo; county, Kern, San Bernardino and Inyo.

Submitted with report of Richard Sachse, chief engineer; date compiled, December, 1912; first track, 142.68 miles; yard tracks, sidings etc., 28.76 miles; total, 171.44 miles.

Class No.	Form No.	I.C.C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost less depreciation
37	--	1	Engineering	$126,769 99	$183,903 36	100	$183,903 36
1	1	2	Right of way and station grounds	31,246 53	26,717 00	100	20,717 00
2	2	3	Real estate				
3	3	4	Grading	1,137,517 76	1,178,014 24	105	1,246,954 57
4	4	5	Tunnels	344,627 68	401,999 10	93	386,976 95
5	5	6	Steel bridges and trusses	74,333 03	74,123 20	95	71,022 80
6	6	6	Pile and frame trestles	45,356 93	49,970 25	94	39,613 02
7	7	6	Culverts	252,880 93	272,314 44	95	258,588 10
8	8	7	Ties	316,893 52	371,674 58	68	253,330 90
9	9	8	Rails	577,603 32	674,216 31	96	650,642 79
10	10	9	Frogs and switches	15,009 48	15,000 17	93	14,010 51
11	11	10	Track fastenings and other material	170,104 93	178,889 54	95	169,919 05
12	12	11	Ballast	73,453 31	88,978 65	95	84,529 13
13	13	12	Tracklaying and surfacing	219,130 72	284,405 55	88	251,195 83
14	14	13	Roadway tools	8,072 88	167 68	70	117 37
15	15	14	Fencing right of way	2,798 97	3,387 09	94	3,204 20
16	16	15	Crossings and signs	2,346 60	2,424 56	92	2,231 45
17	17	16	Interlocking plants				
18	18	16	Signal apparatus				
19	19	17	Telegraph and telephone lines	1,385 82	1,829 33	100	1,829 33
20	20	18	Station buildings and fixtures	6,452 46	9,155 73	96	8,813 36
21	21	18	Platforms, walks, paving and curb	721 61	812 51	95	772 50
22	22	19	General office buildings and fixtures				
23	23	20	Shop buildings and engine houses				
24	24	20	Transfer and turntables, cinder pits, etc.				
25	25	20	Miscellaneous shop buildings and structures				
26	26	21	Shop machinery and tools				
27	27	22	Water stations	65,676 10	68,606 07	94	64,766 90
28	28	23	Fuel stations				
29	29	24	Grain elevators				
30	30	25	Storage warehouses				
31	31	26	Dock and wharf property				
32	32	27	Electric light plants				
33	33	28	Electric power plants				
34	34	29	Electric power transmission				
35	35	30	Gas producing plants				
36	36	31	Miscellaneous structures	1,674 59	2,178 70	83	1,821 35
38	37	32	Transportation of men and material	420,919 99			
39	38	33	Rent of equipment	125,008 92			
40	38	34	Repairs of equipment				
41	--	35	Earning and operating expenses during construction				
42	--	35½	Injuries to persons	50 00	50 00	100	50 00
43	--	36	Cost of road purchased				
44	39	37	Steam locomotives				
45	--	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars				
48	42	41	Work equipment				
49	43	42	Floating equipment				
50	--	43	Law expenses		36,780 67	100	36,780 67
51	44	44	Stationery and printing covered by "Eng."	1,870 10			
52	44	45	Insurance covered by "Other Expenses"				
53	45	46	Taxes covered by "Other Expenses"	422 10			
54	--	47	Interest and commission	206,906 67	243,671 95	100	243,671 95
55	45	48	Other expenditures	44,416 80	19,493 75	100	19,493 75
57	46	--	Stores and supplies on hand for use in California				
			Grand totals	$4,357,216 01	$4,182,683 83	95	$4,014,056 90
			Average per mile for main track	30,538 38	29,315 14	95	28,139 59
			Total accounts 1 to 36, inclusive	4,043,510 04	3,882,737 46	------	3,715,010 53
			Totals accounts 43 to 48, inclusive	313,765 97	299,946 37	------	299,946 37

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EXHIBIT "D."

Comparative statement as between valuations of the Central Pacific Ry. (formerly Navada and California Ry. Co.) as submitted by Company and by the Commission's Engineering Department on December 23, 1914.

Form No.	I.C.C. Acct. No.	Classes	Original cost			Reproduction cost		Reproduction cost less depreciation	
			1	2	3	4	5	6	7
			Company's valuation	Engineering Department, Dec. 23, 1914	Difference between 1 and 2	Engineering Department, Dec. 23, 1914	Difference between 1 and 4	Engineering Department, Dec. 27, 1914	Difference between 1 and 6
--	1	Engineering	$126,709 99	$126,709 99		$183,903 36	*$57,193 37*	$183,903 36	*$57,193 37*
1	2	Right of way and station grounds	31,240 53	31,240 53		20,717 00	10,523 53	20,717 00	10,523 53
3	4	Grading	1,137,517 76	1,137,517 76		1,178,014 24	*40,496 48*	1,246,954 57	*109,436 81*
4	5	Tunnels	344,027 68	344,027 68		401,909 10	*57,881 42*	386,976 95	*42,949 27*
5	6	Steel bridges and trusses	74,333 03	74,333 03		74,123 20	209 83	71,022 80	3,310 23
6	6	Pile and frame trestles	65,350 93	65,350 93		49,970 25	15,380 68	39,613 02	25,737 91
7	6	Culverts	252,886 96	252,886 96		272,314 44	*19,427 48*	258,588 10	*5,701 14*
8	7	Ties	310,893 52	310,893 52		371,674 58	*60,781 06*	253,330 90	57,562 62
9	8	Rails	577,693 32	577,693 32		674,216 31	*96,522 99*	650,642 79	*72,949 47*
10	9	Frogs and switches	15,009 48	15,009 48		15,000 17	9 31	14,010 51	998 97
11	10	Track fastenings and other material	170,164 93	170,164 93		178,899 54	*8,734 61*	169,919 05	245 88
12	11	Ballast	73,453 31	73,453 31		88,978 05	*15,524 74*	84,529 13	*11,075 82*
13	12	Tracklaying and surfacing	219,130 72	219,130 72		284,405 55	*65,274 83*	251,195 83	*32,065 11*
14	13	Roadway tools	163 59	8,072 88	*$7,909 29*	167 68	*4 09*	117 37	46 22
15	14	Fencing right of way	2,728 97	2,728 97		3,387 09	*658 12*	3,204 20	*475 23*
16	15	Crossings and signs	2,346 60	2,346 60		2,424 56	*77 96*	2,231 45	115 15
--	14½	Tools	7,909 29		7,909 29		7,909 29		7,909 29
19	17	Telegraph and telephone lines	1,385 82	1,385 82		1,829 33	*443 51*	1,829 33	*443 51*
20	18	Station buildings and fixtures	6,342 98	6,452 40	*109 42*	9,155 73	*2,812 75*	8,813 36	*2,470 38*
21	18	Platforms, walks, paving and curb	721 61	721 61		812 51	*90 90*	772 50	*50 89*
27	22	Water stations	65,676 10	65,676 10		68,606 07	*2,929 97*	64,766 96	909 14
36	31	Miscellaneous structures	1,674 59	1,674 59		2,178 70	*504 11*	1,821 35	*146 76*
37	32	Transportation of men and material	1,496,475 87	420,919 99	1,075,555 88		1,496,475 87		1,496,475 87
38	33	Rent of equipment	135,068 92	135,068 92			135,068 92		135,068 92
--	35	Earning and operating expenses during construction	213 20		213 20		213 20		213 20
--	35½	Injuries to persons	50 00	50 00		50 00		50 00	

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--	43	Law expenses				36,780 67	*36,780 67*	36,780 67	*36,780 67*
44	44	Stationery and printing	1,870 10	1,870 10		*	1,870 10	*	1,870 10
44	45	Insurance				†		†	
45	46	Taxes	422 40	422 40		†	422 40	†	422 40
--	47	Interest and commission	336,955 99	266,996 67	69,959 32	243,671 95	93,284 04	243,671 95	93,284 04
45	48	Other expenditures	44,416 80	44,416 80		19,498 75	24,923 05	19,498 75	24,923 05
46	--	Stores and supplies on hand for use in California	27,324 68		27,324 68		27,324 68		27,324 68
		Grand totals	$5,530,159 62	$4,357,216 01	$1,172,943 61	$4,182,688 83	$1,847,475 79	$4,014,956 90	$1,515,202 72
		Average per mile for main track	38,756 45	30,538 38	8,218 07	29,315 14	9,441 31	28,139 59	10,616 86
		Total accounts 1 to 36, inclusive	$5,119,169 70	$4,043,510 04	$1,075,659 66	$3,882,737 46	$1,236,432 24	$3,715,010 53	$1,404,159 17
		Total accounts 43 to 48, inclusive	410,989 92	313,705 97	97,283 95	299,946 37	111,043 55	299,946 37	111,043 55

*Covered by "engineering."
†Covered by "other expenses."

NOTE.—Excess of Engineering Department's over company's figures are shown in italic.

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DECISION NO. 2962.

ROCKRIDGE IMPROVEMENT ASSOCIATION

vs.

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 744.

Decided December 8, 1915.

Complainant petitions the Commission to compel defendant, operating a street car system in the cities on the east side of San Francisco Bay, to extend its present Broadway line from College avenue north to Ocean View drive, and an investigation showing that the majority of the residents in the district which this proposed extension is intended to serve are now receiving service from a line not over two blocks distant from their respective residences and that the proposed line, if constructed and operated, would incur an annual deficit of over $8,500.00, complaint dismissed.

Chas. F. Craig, for Complainant.

W. H. Smith and *W. I. Brobeck*, for Defendant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

The complainant in this case is an association of property owners whose purpose is the betterment of that certain section of Oakland, county of Alameda, known as Rockridge. The complainant alleges that the property owners in the district known as Rockridge and closely adjacent thereto are greatly in need of proper transportation facilities and that there is great need for the construction of an extension of the present car line of the San Francisco-Oakland Terminal Railways on Broadway in the city of Oakland, from the junction of Broadway and College avenue northerly on said Broadway to its intersection with Ocean View drive; that many owners of homes in the district known as Rockridge and the closely adjacent territory have been restricted in the full enjoyment of their property by reason of the lack of transportation facilities; that many owners of lots in the district have been deterred from erecting homes thereon by the absence of car service; that there are two hundred and eighty-four homes in the district with an estimated population of eleven hundred thirty-six persons who are deprived of proper transportation facilities by the refusal of the defendant to construct the extension line requested.

The defendant filed its answer denying the material allegations of the complainant.

Public hearings were held on March 30 and 31 and on April 12, 1915, and the case was submitted and is now ready for decision.

The district for which the extension of car service is desired is an exceptionally high class of residential property, carrying rigid build-

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ing restrictions in varying amounts depending on the location of the various lots. Such street improvements as have been made are of a high type and the entire district is one that is extremely attractive for the erection of modern residences. There are three principal subdivisions in the district: Rockridge Place, bounded by Broadway, Lawton avenue, Prospect avenue and Ocean View drive; Rockridge Park, bounded by Prospect avenue, Acacia avenue and McAdam street, and Hays avenue; and Rockridge Terrace, bounded by Hays avenue, Vernon avenue and Broadway Terrace. The extension of line sought by the complainant from College avenue at Broadway Terrace would extend along Broadway in a northwesterly direction to its intersection with Ocean View drive, a distance of thirty-six hundred feet.

The car service now available to residents of this district is furnished by the College avenue line of the defendant and by a shuttle car service on Grand street from the intersection of Grand street, Broadway and College avenue along Grand street to McAdam street, known as the Rockridge line.

A check of the number of houses contained in the district bounded by the east line of College avenue, the east line of Shafter avenue, the south line of Ocean View drive and the west line of Broadway terrace and McAdam street, filed by defendant as its Exhibit No. 3, indicates that there were 498 houses occupied, 9 unoccupied, and 5 under construction in this district, a total of 512, as of March 29, 1915. In my opinion a distance of two blocks is not an unreasonable distance for the patrons of a street car line to be required to walk and under such condition the occupants of 454 houses are at present served by the transportation offered by the defendant's College avenue line, the district so served being that bounded by the east line of Shafter avenue, the west line of Broadway and the north line of College avenue, including also the two blocks bounded by Broadway, Manila and Navy avenues, and the two blocks bounded by Broadway, Prospect avenue and Thomas avenue. The service available on the Rockridge line of the defendant, on the basis of a two-block walk being required on the part of the patrons of the line would care for eight additional houses, although it would appear from testimony given in this case that cars were operated on this line at infrequent intervals. Deducting the number of houses that are served by the existing lines of the defendant from the total of 512 as shown to exist in this territory on March 29, 1915, there remain 50 houses where a walk of more than two blocks is required to reach an existing car line of the defendant, and assuming five persons to each household that would require and use the transportation to be furnished by the proposed Broadway extension there would be 250 persons benefited who now have a walk of more than two blocks to one of the present car lines operated by the defendant.

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The defendant, San Francisco-Oakland Terminal Railways, presented an estimate of the cost of construction of the 3,600 feet of single-track railway from Broadway terrace to Ocean View drive, said estimate including a passing track or turnout some 205 feet in length. This estimate gives a total amount of $25,907.72 as the cost of installation and equipment of the proposed extension ready for service. This estimate has been carefully checked by the Commission's engineering department and is found to be reasonable in view of the type of construction proposed.

Witnesses for defendant presented figures indicating the expense of operating the proposed line and in the following detail:

Car operation, 36 car hours per day at $1.10		$14,454 00
Track maintenance, 3,600 feet, at $849.36 per mile per year		611 28
Line maintenance, 3,600 feet, at $176.98 per mile per year		127 32
Total operating expense (not including superintendence or overhead charges)		$15,192 60
Taxes, State, at 5¼ per cent		466 20
Franchise tax at 2 per cent		177 60
Interest at 6 per cent on estimated cost of construction or $25,907.72		1,554 46
Total		$17,390 86

As regards the possible earning capacity of the projected line and assuming the number of persons in the district to be served to be 1,184 as outlined by Mr. Wells, a witness for the complainant, and multiplying such number by the factor of $7.50 per capita per annum as commonly accepted by traction experts, the line could reasonably be expected to return a gross revenue of $8,880.00 per annum, and in view of the foregoing statements as to cost of operation would show an annual deficit from operation of $8,510.86.

In view of the foregoing facts I am convinced that the construction of the proposed Broadway extension would not be justified in that the revenue to be derived from its operation would not equal or approximate the cost of operation to say nothing of maintenance, taxes, or reasonable return on investment. I am of the opinion that the complaint should be dismissed and recommend the following form of order:

ORDER.

A public hearing having been held in the above entitled proceeding, and the case having been submitted and now ready for decision,

It is hereby ordered that the complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of December, 1915.

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Decision No. 2963.

IN THE MATTER OF THE APPLICATION OF MODESTO GAS, LIGHT, COAL AND COKE COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS AND THE EXECUTION OF A MORTGAGE OF ITS PROPERTY.

Application No. 1918.

Decided December 9, 1915.

Applicant, operating a gas distributing system in the city of Modesto, applies for permission to execute a trust deed securing an issue of $200,000.00 face value 6 per cent first mortgage bonds, and to issue and sell $65,000.00 face value of such bonds, at not less than 90, for the purposes of retiring certain notes and cash advances and for the acquisition of certain property and extensions to its system; and it appearing that such request is reasonable, application granted.

L. J. Maddux, for Applicant.

Report of the Commission.

This is an application of Modesto Gas, Light, Coal and Coke Company, hereinafter referred to as the "gas company," for authority to create a bonded indebtedness of $200,000.00 of first mortgage 6 per cent thirty-year sinking fund gold bonds, and to issue and sell $65,000.00 of said bonds at not less than 90 per cent of their face value; the proceeds of such sale to be used in refunding notes and other debts of said company, in acquiring a parcel of land consisting of two city lots and in extending the gas company's mains and services, as hereinafter more particularly set forth.

Applicant was incorporated April 21, 1884, under the laws of the State of California, for the purpose of supplying gas, coal and coke to the citizens of Modesto, Stanislaus County. Practically all of its stock was held by L. C. Branch, now deceased. In 1891 the Modesto Bank acquired all of Mr. Branch's stock. In May, 1912, the present owners acquired the property from the Modesto Bank.

The gas company has an authorized issue of 1,000 shares of common stock, of the par value of $100.00 per share. All of said stock is now issued and outstanding, and is held as follows:

Frank A. Cressey (the company's president)	163 shares.
Frank A. Cressey, Jr. (the company's vice president and general manager)	252 shares.
Josephine Cressey (the company's secretary)	251 shares.
Mary E. McCarthy	299 shares.
Thomas G. McCarthy	32 shares.
J. W. Murphy	1 share.
Romola Cressey	1 share.
Charles F. McCarthy	1 share.

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The company has no preferred stock and has paid only one dividend since 1894. At the present time applicant has no bonded indebtedness and no mortgages upon its property. Its total indebtedness is as follows:

Balance due on one-year note bearing interest at 8 per cent, dated January 2, 1912, in favor of Frank A. Cressey	$27,663 65
Balance due on one-year note bearing interest at 8 per cent, dated February 14, 1914, in favor of Frank A. Cressey	15,114 35
Cash advanced by Frank A. Cressey, bearing interest at 8 per cent	3,000 00
Interest due on same	499 20
Due Farmers and Merchants Bank, open account as of October 1, 1915	3,013 05
Total indebtedness	$49,290 25

An abstract of the company's earning statement for the past three years, as shown by its annual reports to the Commission, is as follows:

Income Account.

	1912	1913	1914
Operating revenues	$38,138 20	$41,122 93	$40,775 05
Operating expenses	26,399 85	30,672 76	28,956 15
Net operating revenues	$11,738 35	$10,450 17	$11,818 90
Deduct—			
Interest charges	3,500 00	5,278 30	3,381 53
Uncollectible bills			647 15
Net corporate income	$8,238 35	$5,171 87	$7,790 22
Balance to profit and loss	8,238 35	5,171 87	7,790 22

The bonds which applicant proposes to issue are to be secured by a trust indenture to Union Trust Company of San Francisco. This indenture provides for a total issue of $200,000.00 of first mortgage 6 per cent thirty-year gold bonds, secured by a pledge of all the property which the company now owns or may hereafter acquire. These bonds are callable at 105 and accrued interest. A sinking fund is provided, as follows:

1921 to 1925, inclusive, 1 per cent of outstanding bonds.
1926 to 1930, inclusive, 2 per cent of outstanding bonds.
1931 to 1935, inclusive, 3 per cent of outstanding bonds.
1936 to 1940, inclusive, 4 per cent of outstanding bonds.
1941 to 1945, inclusive, 5 per cent of outstanding bonds.

In its application the gas company asks for authority to issue and sell $65,000.00 of these bonds, at not less than 90, for the following purposes:

1. $49,290.25 for the retirement of the company's notes and other indebtedness hereinbefore set forth.
2. $800.00 for the purchase of two lots adjoining the gas company's property in the city of Modesto.
3. $8,409.75 for the extension of the gas company's mains and services in the Maze Addition to the city of Modesto.

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The two lots of land above referred to are immediately adjacent to the gas company's property, and will piece out said property so as to form a rectangular parcel of land. At present this portion of the gas company's property is not being used, but as the city of Modesto has been growing rapidly it is very possible that if the company did not buy these lots at this time it might not be able to buy them later, except at a far higher figure.

As to the proposed extension of the gas company's mains and services throughout the Maze Addition, we find that such an extension is proper and desirable. This addition is well built up, containing approximately two hundred houses, and its growth, according to the evidence introduced, will apparently continue. Mr. Frank A. Cressey, Jr., testified that he had a number of requests for service from the inhabitants of this district, and apparently the proposed extension will be not only of service to the residents of this district, but will be a profitable investment for the gas company.

It also appears that the gas company's plant is well built and is well maintained, that its distribution mains are in good condition, and there is an ample margin between the value of the company's property and the face value of the bonds which it proposes to issue at this time.

As to the remaining $135,000.00 of bonds, the gas company intends to issue the same, from time to time, for the purpose of financing 85 per cent of the cost of additions and betterments.

From the evidence it appears that all of said indebtedness of $49,290.25, excepting the sum of $499.20, due from the company as interest to Frank A. Cressey upon cash advanced as above set forth, was incurred by the company for the purpose of the acquisition of property, or the construction, extension and improvement of its facilities and services, and that all of such expenditures, except said sum of $499.20, are properly chargeable to capital account.

The company has no franchise in the city of Modesto, having operated there for approximately twenty years before the city was incorporated.

ORDER.

Modesto Gas, Light, Coal and Coke Company having applied to this Commission for authority to create a bonded indebtedness of $200,000.00 of first mortgage 6 per cent thirty-year gold bonds, and to issue and sell $65,000.00 of said bonds at not less than 90 per cent of their face value; and a public hearing having been held upon said application, and the Commission finding that the purposes for which the proceeds of said bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

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It is hereby ordered that Modesto Gas, Light, Coal and Coke Company be and it is hereby authorized to execute a mortgage or trust indenture to the Union Trust Company of San Francisco substantially in the form of the proposed indenture filed with this Commission on December 7, 1915, and marked Exhibit "D," to secure the proposed bonds issue of $200,000.00 of bonds, as therein set forth.

It is hereby further ordered that Modesto Gas, Light, Coal and Coke Company be and it is hereby authorized to issue and sell, under said trust indenture, bonds to the par value of $65,000.00 on the following conditions, and not otherwise, to wit:

1. Modesto Gas, Light, Coal and Coke Company shall sell said $65,000.00 of bonds so as to net said company not less than 90 per cent of the par value of the principal thereof, in addition to the accrued interest.

2. The proceeds from the sale of the said bonds shall be applied only as follows, and not otherwise:

Refunding the promissory note dated January 2, 1912, in favor of Frank A. Cressey	$27,663 65
Refunding the promissory note dated February 14, 1914, in favor of Frank A. Cressey	15,114 35
Refunding the indebtedness for cash advanced to the gas company by Frank A. Cressey	3,000 00
Refunding the gas company's indebtedness to the Farmers and Merchants Bank of Modesto, upon its open account	3,013 05
For the purchase of two lots adjacent to the gas company's property in the city of Modesto	800 00
For the extension of the gas company's mains and services in the Maze Addition to the city of Modesto	8,998 95
Total	$58,590 00

3. Modesto Gas, Light, Coal and Coke Company shall keep separate, true and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the bonds herein authorized to be issued; and on or before the twenty-fifth day of each month, the company shall make verified reports to the Commission, stating the sale or sales of said bonds during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's General Order No. 24, which order, in so far as applicable, is made a part of this order.

4. The approval herein given of the mortgage or indenture for the proposed bond issue is for the purpose of this proceeding only, and an approval in so far as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said mortgage as to such other legal requirements to which said mortgage may be subject.

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5. The authority hereby given to issue and sell bonds shall apply only to bonds so issued and sold by the gas company on or before the 31st day of October, 1916.

6. This order shall not become effective until the fee prescribed by section 57, as amended, of the Public Utilities Act has been paid.

Dated at San Francisco, California, this 9th day of December, 1915.

DECISION No. 2964.

IN THE MATTER OF THE APPLICATION OF CONSOLIDATED SECURITIES COMPANY FOR PERMISSION TO ISSUE ITS PROMISSORY NOTE FOR TWENTY-FIVE THOUSAND DOLLARS, AND TO EXECUTE A DEED OF TRUST SECURING THE SAME.

Application No. 1985.

Decided December 9, 1915.

Applicant applies for and is granted permission to issue its three-year promissory note of the face value of $25,000.00, bearing interest at the rate of 7 per cent per annum, proceeds to be used, $11,500.00 for the purchase of land, the balance for paying off existing incumbrances against its property.

W. J. Williams, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue by Consolidated Securities Company, a corporation, of a promissory note for $25,000.00, bearing interest at the rate of 7 per cent per annum and payable November 20, 1918, and the execution of a deed of trust securing the same. The proposed note is to be payable to California Security-Loan Corporation and the proposed deed of trust is to be made to Title Guaranty and Trust Company, as trustee. Said proposed deed of trust contains a provision for further advances upon the property pledged in the amount of $2,500.00. A copy of the said proposed deed of trust, marked Exhibit "C," is annexed to the application herein and contains a description of the four parcels of property affected by this application.

Applicant desires to issue said promissory note for the following purposes, namely: First, to purchase from said California Security-Loan Corporation the property designated in said deed of trust as parcels two, three and four, for the sum of $11,500.00; and second, to apply a further sum, amounting to $13,500.00, to the paying off of the existing incumbrance against the property described in said deed of trust as parcel one.

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Applicant's president testified that he considered the real estate designated as parcel one to be worth at least $40,000.00, and that designated as parcels two, three and four to be worth at least $11,500.00.

It further appears that applicant is engaged principally in the business of buying and selling real estate, and merely owns and operates certain small utility properties as a part of its business. None of the property included in the proposed deed of trust, however, is used as a part of or in connection with any of said public utility properties. Accordingly this Commission's authorization is not necessary so far as the execution of the deed of trust is concerned. It is, nevertheless, necessary for the execution of the three-year note to be secured thereby.

ORDER.

Application having been made by Consolidated Securities Company for an order authorizing the execution of its promissory note to California Security-Loan Corporation and the execution of its deed of trust as security for the same to Title Guaranty and Trust Company, as trustee, and a public hearing having been held, and it appearing to the Commission that the purposes for which said note, or the proceeds thereof, are to be used are not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered that Consolidated Securities Company be and the same is hereby authorized to issue its promissory note to California Security-Loan Corporation for the principal sum of $25,000.00, said note to be dated November 20, 1915, and to be payable three years after date and to bear interest at the rate of 7 per cent per annum.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Consolidated Securities Company shall issue said note so as to net not less than the face value thereof.

2. Consolidated Securities Company shall apply the proceeds of said note as follows: the sum of $11,500.00 to the purchase price of the land described as parcels two, three and four, in said proposed deed of trust, and the sum of $13,500.00 to paying off the existing encumbrance against the property described therein as parcel one.

3. Within thirty days after the issue of said promissory note applicant shall report to this Commission the payee of said note, its date, its term, rate of interest, the face value thereof, and the disposition of the proceeds.

4. The note herein authorized shall be executed and issued by applicant on or before March 31, 1916.

5. This order shall not become effective until Consolidated Securities Company has paid the fee specified in section 57, as amended, of the Public Utilities Act.

Dated at San Francisco, California, this 9th day of December, 1915.

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DECISION No. 2965.

IN THE MATTER OF THE APPLICATION OF E. E. HALL AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1989.

Decided December 9, 1915.

REPORT OF THE COMMISSION.

E. E. Hall, who operates a public utility water system supplying about 700 persons in the territory in the city of Los Angeles bounded on the north by Ambrose avenue, on the east by Talmadge street, on the south by Clayton avenue and on the west by Vermont avenue, having applied to this Commission for authority to sell his public utility system to the board of public service commissioners of the city of Los Angeles for the sum of $2,500.00, the property to be transferred being described in detail in a form of deed attached to the application and marked Exhibit "A," as follows:

> "(*a*) All street mains, service connections, meters, appliances, appurtenances and extensions constituting and pertaining to the water distributing system owned by said first parties and supplying water in the territory in the city of Los Angeles, bounded as follows: On the north by Ambrose avenue, on the east by Talmadge street, on the south by Clayton avenue and on the west by Vermont avenue; together with all mains, connections and appurtenances pertaining to said water system in any of said bounding streets, or elsewhere in said city of Los Angeles; excepting pumping plant, buildings, wells, machinery and reservoir and the land whereon the same are located; and also excepting the pipes used to connect said pumping plant and reservoir with said street mains;
>
> (*b*) All franchises and rights of way owned or held by or for said first parties, or either of them, and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works;
>
> (*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers, property ratings, etc."

And the Commission being of the opinion that this is not a case in which a public hearing is necessary and that the application should be granted,

It is hereby ordered that this application be and the same is hereby granted, this order to become effective upon the filing with the Commission by the board of public service commissioners of the city of Los Angeles a stipulation that the latter takes over this public utility system with all its obligations as a public utility and that said board

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of public service commissioners will supply adequate service of water to the consumers within the area heretofore served by E. E. Hall.

Dated at San Francisco, California, this 9th day of December, 1915.

DECISION No. 2966.

IN THE MATTER OF THE APPLICATION OF T. W. BROTHERTON AND THE BOARD OF PUBLIC SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES FOR AN ORDER AUTHORIZING THE SALE OF PUBLIC UTILITY PROPERTY.

Application No. 1990.

Decided December 9, 1915.

REPORT OF THE COMMISSION.

T. W. Brotherton, who operates a public utility water system supplying about 130 consumers in the territory in the city of Los Angeles, bounded on the north by Ambrose avenue, on the east by Hillhurst avenue, on the south by Franklin avenue and on the west by Vermont avenue, having applied to the Railroad Commission for authority to sell to the board of public service commissioners of the city of Los Angeles for the sum of $500.00 his public utility system, the property to be transferred being described in detail in a form of deed attached to the application as Exhibit "A," as follows:

> "(*a*) All water pipes, service connections, meters, appliances, appurtenances and extensions constituting and pertaining to the water distributing system owned by said first parties and located in Brotherton place in said city of Los Angeles, in said county of Los Angeles, in territory bounded as follows: On the north by Ambrose avenue, on the east by Hillhurst avenue, on the south by Franklin avenue, and on the west by Vermont avenue; together with all mains, connections and appurtenances pertaining to said water system in any of said bounding streets or elsewhere in said city; with the exception of service connections which have been installed on said street mains by E. E. Hall; and also excepting wells, machinery, buildings, reservoir, and land whereon the same are located; and further excepting mains laid in property owned by said first parties and connecting the pumping plant and reservoir owned by said first parties with said street mains;
>
> (*b*) All franchises and rights of way owned or held by or for said first parties, or either of them, and used or necessary in connection with the construction or operation of said works, or any part thereof, or any extension of said works;
>
> (*c*) All maps and records pertaining to said water system and relating to pipes, services, consumers, property ratings, etc."

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And the Commission being of the opinion that this is not a case in which a public hearing is necessary and that the application should be granted,

It is hereby ordered that this application be and the same is hereby granted, this order to become effective upon the filing with the Commission by the board of public service commissioners of the city of Los Angeles a stipulation that the latter takes over this public utility system with all its obligations as a public utility, and that said board of public service commissioners will supply adequate service of water to the consumers within the area heretofore served by T. W. Brotherton.

Dated at San Francisco, California, this 9th day of December, 1915.

DECISION No. 2967.

IN THE MATTER OF THE APPLICATION OF UNITED RAILROADS OF SAN FRANCISCO FOR AN ORDER AUTHORIZING THE ISSUE OF ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS SIX PER CENT TWO-YEAR NOTES.

Application No. 1992.

IN THE MATTER OF THE APPLICATION OF MARKET STREET RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF FIVE PER CENT GOLD BONDS OF THE FACE VALUE OF TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS.

Application No. 1993.

Decided December 11, 1915.

United Railroads of San Francisco, owning and operating a consolidated street railway system in the city of San Francisco, applies for permission to issue $1,800,000.00 two-year 6 per cent promissory notes, the proceeds of which are to be used to pay off $1,800,000.00 bonds of the Market Street Railway Company; $3,000,000.00 face value of the bonds of the latter named company fell due January 1, 1913, of that amount, $1,200,000.00 face value have been canceled, applicant having secured an extension of time from holders of the remainder, to refund which it now asks permission to issue the notes herein mentioned. In connection with this issue of notes, Market Street Railway Company applies for permission to issue $2,250,000.00 par value of its 5 per cent bonds to be pledged as security therefor.

A review of applicant's financial condition shows that it is operating under a considerable deficit which heretofore was reported as a surplus. The books showing how this surplus was arrived at are missing from the company's offices, and the Commission expresses itself as being disinclined to authorize further issues of securities by this company until it has access to these books.

Held, United Railroads authorized to issue $1,800,000.00 face value 6 per cent promissory notes and Market Street Railway Company is authorized to issue $1,800,000.00 face value of its first mortgage bonds to be pledged as security therefor, proceeds of said notes to be used for purchasing and canceling $1,800,000.00 Market Street Railway bonds, provided that none of

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such notes or bonds shall be issued until United Railroads shall have taken proper steps to produce its original books of accounts for the years 1907, 1908, 1909, 1910, and 1911.

William M. Abbott, and *Charles P. Eells,* for Applicants.

REPORT OF THE COMMISSION.

The above entitled proceedings were consolidated for hearing and decision.

The petition in Application No. 1992 alleges, in effect, that Market Street Cable Railway Company, on October 27, 1882, issued its first mortgage 6 per cent gold bonds of the total face value of $3,000,000.00, which bonds were to mature on January 1, 1913; that said bonds are secured by a deed of trust or mortgage dated October 27, 1882, covering all the properties and franchises of Market Street Cable Railway Company; that on or before the date of maturity of said bonds $1,200,000.00 thereof were paid and canceled, leaving for payment $1,800,000.00 thereof; that the holders of said $1,800,000.00 of bonds require payment thereof on December 15, 1915; that United Railroads of San Francisco is the owner and in possession of all the franchises, rights and properties of Market Street Cable Railway Company and has assumed said company's debts and liabilities, including its bond issue; that United Railroads of San Francisco desires to postpone the time for the payment of the bonds of Market Street Cable Railway for a period of ten months, until October 15, 1916; that for the purpose of providing moneys with which to pay said bonds, United Railroads of San Francisco, desires to secure an order authorizing it at any time on or before October 15, 1916, to issue its notes for $1,800,000.00, said notes to run for a period of two years from the date thereof, to bear interest at the rate of 6 per cent per annum, and to be secured by 2,250 of the 5 per cent first consolidated mortgage bonds of Market Street Railway Company, due September 1, 1924; and that since December 31, 1912, the outstanding indebtedness against the properties of United Railroads of San Francisco has been reduced $3,795,000.00.

The petition in Application No. 1993 alleges, in effect, that Market Street Railway Company was formed by the consolidation and amalgamation of several street railway corporations owning and operating street railways in the city and county of San Francisco, including, among others, Market Street Cable Railway Company; that Market Street Railway Company succeeded to all the debts, properties, assets and franchises of its various predecessor companies, including Market Street Cable Railway Company; that the deed of trust or mortgage of Market Street Railway Company to Union Trust Company of San Francisco, dated July 12, 1894, provides in part that bonds of Market Street Railway Company may be issued to take up the then outstand-

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ing bonds of a number of predecessor companies, including Market Street Cable Railway Company; that on March 18, 1902, Market Street Railway Company sold all its property to United Railroads of San Francisco, including the properties formerly owned by Market Street Cable Railway Company; that Market Street Railway Company desires to issue 2,250 of its 5 per cent gold bonds as collateral security on the $1,800,000.00 of notes which United Railroads of San Francisco desires to issue for the purpose of paying Market Street Cable Railway Company bonds of the face value of $1,800,000.00; and that 7,341 bonds of Market Street Railway Company, having a total face value of $7,341,000.00, have heretofore been issued.

A public hearing on these applications was held in San Francisco on December 8, 1915, before the Commission en banc.

United Railroads of San Francisco, in its annual report for the year ending June 30, 1915, reports capital stock as follows:

TABLE NO. I.

United Railroads of San Francisco.

Capital Stock.

Class of stock	Authorized	Outstanding
Common	$18,800,000	$18,800,000
Second preferred	20,000,000	20,000,000
First preferred	5,000,000	5,000,000
Totals	$43,800,000	$43,800,000

The annual report of United Railroads of San Francisco for the year ending June 30, 1915, reports this stock to be held as follows:

TABLE NO. II.

United Railroads of San Francisco.

Ownership of Its Stock.

Name of stockholder	Common shares	Second preferred shares	First preferred shares
United Railway Investment			*50,000
P. M. Hoskins	*79,500	*200,000	
San Francisco Electric Railways	99,975		
Chas. N. Black	1		
John A. Buck	1		
Washington Dodge	1		
A. W. Foster	1		
B. S. Guinness	1		
Jesse W. Lilienthal	1		
J. C. McKinstry	1		
A. H. Payson	1		
Henry F. Scott	1		
L. S. Sherman	1		
George B. Wilcott	1		

*Reported by California Railway and Power Company as its property.

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In the second annual report of California Railway and Power Company to its stockholders for the year ending June 30, 1915, the claim is made that the company owns $5,000,000.00, par value, of first preferred stock, $20,000,000.00, par value, of second preferred stock, and $7,950,000.00, par value, of the common stock of United Railroads of San Francisco. California Railway and Power Company also owns $9,997,500.00 par value, of stock of San Francisco Electric Railways, which company, as appears above, owns $9,997,500.00, par value, of common stock of the United Railroads of San Francisco.

With reference to the apparent discrepancy as to the ownership of the stock of United Railroads of San Francisco, as between the annual report of United Railroads of San Francisco, filed with this Commission, and the second annual report of California Railway and Power Company to its stockholders, Mr. B. S. Guinness testified that while the stock of United Railroads of San Francisco, or a portion thereof, may stand in the name of other corporations or individuals, the entire stock is, in effect, owned by California Railway and Power Company.

California Railway and Power Company has issued $2,800,000.00 of 7 per cent cumulative prior preference stock, $6,874,400.00 of 7 per cent cumulative preferred stock and $40,000,000.00 of common stock. Mr. Guinness testified that the prior preference stock is in the hands of the public but that the remaining stock is owned by United Railway Investment Company.

United Railways Investment Company has issued preferred stock of the par value of $16,000,000.00 and common stock of the par value of $20,400,000.00. Mr. Guinness testified that the stock of United Railways Investment Company is in the hands of the general public, but that the banking firm of Ladenburg, Thalmann & Company of New York, together with its associate banks, holds the control of the stock.

In its annual report for the year ending June 30, 1915, United Railroads of San Francisco reports its "bonded and long term" indebtedness as follows:

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TABLE NO. III.

United Railroads of San Francisco.

Bonded and Long Term Indebtedness.

Name and character of obligation	Date of issue	Date of maturity	Rate of interest	Par value authorized	Total par value issued	Total par value acquired	Total par value outstanding
Market Street Railway Company	July 12, 1894	Sept. 1, 1924	5	$17,500,000	$7,341,000	----------	$7,341,000
United Railways of San Francisco	June 7, 1902	Apr. 1, 1927	4	35,275,000	25,359,000	$1,505,000	23,542,000
Omnibus Cable Company	Apr. 2, 1888	Apr. 2, 1918	6	2,000,000	2,000,000	----------	1,980,000
Sutter Street Railway Company	May 1, 1898	May 1, 1918	5	1,000,000	1,000,000	----------	1,000,000
Market Street Cable Railway Company	Oct. 27, 1882	Dec. 15, 1915	6	3,000,000	3,000,000	1,200,000	1,800,000
Ferries and Cliff House Railway Company	Mar. 1, 1889	Dec. 31, 1916	6	650,000	650,000	250,000	400,000
Ten-year gold notes	Feb. 1, 1906	Feb. 1, 1916	5	1,000,000	1,000,000	----------	1,000,000
Equipment notes of 1910	June 15, 1910	8 year serial	6	400,000	400,000	250,000	150,000
Equipment notes of 1912	July 1, 1912	10 year serial	----------	300,000	300,000	90,000	210,000
Totals	----------	----------		$61,125,000	$41,050,000	$3,295,000	$37,423,000

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The United Railroads of San Francisco reports its current liabilities as of June 30, 1915, as follows:

TABLE NO. IV.

United Railroads of San Francisco.

Current Liabilities.

Notes payable United Railway Investment Company---------- Three notes due January 1, 1913, each for $185,000.00. Note due June 1, 1913, for $185,000.00.	$740,000 00
Note payable to California Railway and Power Company------	1,925,000 00
Note payable to Wells-Fargo Nevada National Bank----------	50,000 00
Note payable to Sutter Street Railway Company----------	15,120 00
Notes payable to General Electric Company----------	5,062 50
Audited vouchers and wages unpaid ----------	537,010 00
Matured interest, dividends and rents unpaid----------	48,430 00
Accrued interest, dividends and rents payable----------	496,746 63
Total ----------	$3,817,369 13

United Railroads of San Francisco reports current assets as of June 30, 1915, amounting to $1,050,656.86, thus leaving a net current indebtedness amounting to $2,766,692.27.

To summarize, the net indebtedness of United Railroads of San Francisco, on June 30, 1915, was

Bonds and other long term debt----------	$37,423,000 00
Current debt (net) ----------	2,766,692 27
Total ----------	$40,189,692 27

For the fiscal years 1912, 1913, 1914, and 1915, and for the four months ending October 31, 1915, United Railroads of San Francisco reported earnings and expenses as follows:

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TABLE NO. V—United Railroads of San Francisco.

Earnings and Expenses.

Item	1912	1913	1914	1915	Four months ending October 31, 1915
Operating revenue	$8,173,113 91	$8,589,247 56	$8,515,893 73	$8,030,997 80	$2,828,185 88
Operating expenses	4,256,739 36	4,705,828 61	4,722,736 86	4,757,826 54	1,676,651 80
Net operating revenue	$3,916,374 55	$3,883,418 95	$3,793,156 87	$3,273,171 26	$1,151,534 08
Miscellaneous income—					
Interest on deposits	$6,367 93	$3,157 59	$110 79		
Income from securities owned	35,688 49	47,682 65	47,172 05	$181,074 93	
Other miscellaneous income	21,426 08	7,685 94	3,232 19	12,329 47	$65,669 62
Totals	$63,482 50	$58,526 18	$50,515 03	$193,404 40	$65,669 62
Gross income	$3,979,857 05	$3,941,945 13	$3,843,671 90	$3,466,575 66	$1,217,203 70
Deductions from gross income—					
Taxes	$402,000 00	$453,200 00	$503,800 00	$516,000 00	$172,000 00
Interest on funded debt	1,950,731 65	1,817,178 58	1,719,964 65	1,691,660 77	574,910 55
Interest on floating debt	49,162 21	150,487 53	206,294 35	197,693 59	46,329 29
Rents for leased lines	84,600 00	77,300 00	126,600 00	181,936 97	58,800 00
Other deductions from income			5,573 38		
Totals	$2,486,493 86	$2,498,166 11	$2,562,232 38	$2,587,291 33	$852,039 84
Net income	$1,493,363 19	$1,443,779 02	$1,281,439 52	$879,284 33	$365,163 86
Disposition of net income—					
Reserve for mortgage sinking fund	$387,462 76	$405,720 97	$382,134 50	$4,912,648 76	
Dividends, 7 per cent on first preferred stock	350,000 00	350,000 00	350,000 00		
Dividends, 10 per cent on preferred stock		200,000 00			
Reserved under order Railroad Commission					$183,333 33
Totals	$737,462 76	$955,720 97	$732,134 50	$4,912,648 76	$183,333 33
Surplus for year	$755,900 43	$488,058 05	$549,305 02	*$4,033,364 43	$181,830 53
Surplus beginning of year	292,212 58	623,798 68	462,139 24	1,018,632 81	
Surplus before making profit and loss adjustments	1,048,113 01	1,111,856 73	1,011,444 26	*2,890,776 42	
Additions to profit and loss	929,580 59	1,158,902 47	306,403 01	123,955 20	
Deductions from profit and loss	1,353,894 92	1,808,619 96	299,214 46	1,288,370 97	
Surplus end of year	623,798 68	462,139 24	1,018,632 81	*4,179,147 39	

*Deficit.

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United Railroads of San Francisco reports its assets as of June 30, 1914, and June 30, 1915, as follows:

TABLE NO. VI.

United Railroads of San Francisco.

Assets June 30, 1914, and June 30, 1915.

Assets	1914	1915	Increase or decrease
Investments:			
Road and equipment	$82,411,601 93	$81,349,227 85	$1,062,374 08—
Sinking funds	1,978,921 72	1,977,828 64	1,093 08—
Deposits in lieu of mortgaged property sold	----------	10,000 00	10,000 00+
Investment in affiliated companies:			
Stocks	1,350 00	1,350 00	----------
Bonds	309,055 63	213,674 50	95,291 13—
Notes	418,784 77	418,784 77	----------
Other investments:			
Stocks	854,028 40	2,628 40	851,400 00—
Total investments	$85,973,742 45	$83,973,584 16	$2,000,158 29—
Current assets:			
Cash	$58,848 97	$212,986 02	$154,137 95+
Special deposits	1,834 15	1,834 15	----------
Loans and notes receivable	16,512 41	2,314 95	14,197 46—
Miscellaneous accounts receivable	175,075 14	213,452 98	38,377 84+
Materials and supplies	635,426 28	579,385 29	56,040 99—
Interest, dividends and rents received	1,279 33	38,605 57	37,326 24+
Other current assets	2,127 00	2,077 00	50 00—
Total current assets	$891,103 28	$1,050,656 86	$159,553 58+
Unadjusted debits:			
Rents and insurance premiums paid in advance	$13,376 73	$14,449 50	$1,072 77+
Discount on funded debt	948,338 10	876,580 33	71,757 77—
Other unadjusted debits	90,955 70	64,461 50	26,494 20—
Total unadjusted debits	$1,052,670 53	$955,491 33	$97,179 20—
Grand totals	$87,917,516 26	$85,979,732 35	$1,937,783 91—

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United Railroads of San Francisco reports its liabilities as of June 30, 1914, and June 30, 1915, as follows:

TABLE NO. VII.

United Railroads of San Francisco.

Liabilities June 30, 1914, and June 30, 1915.

Liabilities	1914	1915	Increase or decrease
Capital stock	$43,800,000 00	$42,948,600 00	$851,400 00
Long term debt:			
Funded debt unmatured	37,763,000 00	37,423,000 00	340,000 00—
Notes to affiliated company	810,000 00	740,000 00	70,000 00—
Total long term debt	$38,573,000 00	$38,163,000 00	$410,000 00—
Current liabilities:			
Loans and notes payable	$2,085,120 00	$1,995,182 50	$89,937 50—
Audited accounts and wages payable	652,966 02	537,010 00	115,956 02—
Matured interest, dividends and rents unpaid	42,610 00	48,430 00	5,820 00+
Accrued interest, dividends and rents payable	502,985 20	496,746 63	6,238 57—
Total current liabilities	$3,283,681 22	$3,077,349 13	$206,332 09
Miscellaneous deferred liabilities	62,623 90	62,816 40	192 50+
Unadjusted credits:			
Operating reserves			
Accrued depreciation (road and equipment)			
Reserve for amortization of franchise	$454,791 53	$880,990 03	$426,198 50+
Accrued depreciation (miscellaneous physical property)			
Tax liability	220,093 35	229,634 28	
Other unadjusted credits	7,221 55	9,550 57	2,329 02+
Total unadjusted credits	$682,106 43	$1,120,174 88	$438,068 45+
Corporate surplus:			
Sinking fund reserves	$405,290 57	$4,786,939 33	$4,381,648 76+
Profit and loss	1,110,814 14	—4,179,147 39	5,289,961 53—
Total corporate surplus	$1,516,104 71	$607,791 94	$908,312 77—
Grand totals	$87,917,516 26	$85,979,732 35	$1,937,783 91—

It will be observed that for the year ending June 30, 1915, a sinking fund reserve amounting to $4,786,939.33 is set up. The annual report for the year ending June 30, 1915, sets forth securities and other investments in the sinking funds amounting to $1,976,789.96. By reason of the absence of the original books of account of United Railroads of San Francisco for the years 1907, 1908, 1909, 1910, and 1911, the Railroad Commission has been unable to ascertain the items which enter into the total sinking fund reserve reported as $4,786,939.33, or the amount of this total which is to be credited to each bond issue. United Railroads of San Francisco has been directed to supply the

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information necessary for a satisfactory determination of these questions.

It will also be observed that the annual report for the year ending June 30, 1915, shows a total deficit of $4,179,147.39. Whether a larger deficit in fact exists can not be determined until the original books of account of United Railroads of San Francisco, hereinbefore referred to, have been produced. In response to a question from the Commission at the hearing with reference to the legality, under the law of this State, of any further declarations of dividends until this deficit has been converted into a surplus, Mr. Jesse W. Lilienthal, president of United Railroads of San Francisco, stated that the legality of the declaration of any such dividend until this deficit has been converted into a surplus is so doubtful that he would not advise his fellow directors to declare any further dividend until this deficit has been made good.

As stated in the petitions herein, the bonds of Market Street Cable Railway Company, totaling three million dollars, became due on January 1, 1913. Bonds of the face value of $1,200,000.00 were paid and canceled. United Railroads of San Francisco made an arrangement with E. H. Rollins & Sons by which the holders of the remaining $1,800,000.00 of bonds agreed to defer claims for payment until December 15, 1913. This arrangement is set forth in agreement dated December 27, 1912, between United Railroads of San Francisco and E. H. Rollins & Sons, a copy of which agreement is on file herein. On November 15, 1913, United Railroads of San Francisco entered into a further agreement with E. H. Rollins & Sons, in which agreement E. H. Rollins & Sons agreed that they would secure a further waiver of presentation for payment until December 15, 1915. Under this agreement, interest coupons at the rate of 6 per cent per annum covering the period from December 15, 1913, to December 15, 1915, were issued by United Railroads of San Francisco. The interest was to be paid semiannually on June 15, and December 15, in each of the years 1914 and 1915. These interest coupons were attached by E. H. Rollins & Sons to each of the outstanding 1,800 bonds. Application was not made to this Commission for authority to issue any of these coupons. They clearly constituted evidence of indebtedness. Consequently, under the provisions of section 52 of the Public Utilities Act, the coupons payable at periods in excess of twelve months from the date of issue, namely, the coupons payable on June 15, 1915, and December 15, 1915, were absolutely void. The parties to this transaction issued these coupons on advice of counsel that such action could legally be taken without securing authorization from the Railroad Commission. We are satisfied that the parties did not intend to violate the Public Utilities Act, and for that reason do not consider it necessary to go into the matter further.

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On March 1, 1914, $650,000.00 face value, of first mortgage bonds of Ferries and Cliff House Railway Company, one of the predecessor companies of United Railroads of San Francisco, became due. At this time, $50,000.00 of said bonds were paid and canceled. On January 21, 1914, an agreement was entered into between United Railroads of San Francisco, party of the first part, and Anglo and London-Paris National Bank and N. W. Halsey & Company, parties of the second part, under which the parties of the second part agreed to purchase the outstanding bonds of the face value of $600,000.00 and to waive and postpone presentation thereof for payment, as well as any right of foreclosure, until December 31, 1914. Two interest coupons were attached to each of said bonds, but as the term of the coupons was less than twelve months, this Commission's consent to the issue of said coupons was not necessary. On December 13, 1914, United Railroads of San Francisco, entered into an agreement with E. H. Rollins & Sons reciting that the United Railroads of San Francisco was to pay and cancel an additional $200,000.00, face value of said bonds, and desired an extension of time on the remaining $400,000.00, face value. E. H. Rollins & Sons agreed to waive presentation of payment and foreclosure until December 31, 1916, if semiannual interest at the rate of 6 per cent should be regularly paid in the mean time. In accordance with this agreement, United Railroads of San Francisco issued four interest coupons which were attached to each of the outstanding 400 bonds. These interest coupons were payable semiannually on June 30, 1915, December 31, 1915, June 30, 1916, and December 31, 1916. As the interest coupons payable June 30, 1916, and December 31, 1916, were for terms in excess of twelve months, and as the Railroad Commission's consent was not secured, these interest coupons are absolutely void. These interest coupons should be called in and canceled and United Railroads of San Francisco should at once take steps to comply with the provisions of section 52 of the Public Utilities Act.

The holders of the outstanding bonds of Market Street Cable Railway Company amounting to $1,800,000.00, now demand payment United Railroads of San Francisco is of the opinion that if it can secure from this Commission an order authorizing the issue of notes for $1,800,000.00 at any time on or before October 15, 1916, for the purpose of paying these bonds, a further extension of the time for paying said bonds may be secured. United Railroads of San Francisco accordingly asks for an order authorizing the issue of its 6 per cent gold notes of the face value of $1,800,000.00, maturing two years from the date of issue, these notes to be secured by 5 per cent first mortgage bonds of Market Street Railway Company of the face value of $2,250,000.00. No definite arrangements have as yet been made for the

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sale of these notes. No testimony was presented with reference to the price at which the notes are to be sold. No plan was presented for the payment of these notes if they should be authorized and issued. The Commission drew attention at the hearing to the fact that a number of additional obligations of United Railroads of San Francisco will shortly be payable. On February 1, 1916, ten-year gold notes of United Railroads of San Francisco of the face value of $1,000,000.00 become due. On December 31, 1916, the remaining outstanding bonds of Ferries and Cliff House Railway Company, of the face value of $400,000.00 are payable. Furthermore, United Railroads of San Francisco owes United Railways Investment Company $740,000.00, of which amount $555,000.00 was due on January 1, 1913, and $185,000.00 was due on June 1, 1913. When asked whether any arrangement had been made to pay these obligations as well as the notes for the issue of which application is now being made, Mr. B. S. Guinness, who represents the controlling interest in these properties, stated that no such arrangement had been made and that he assumed that a reorganization would be necessary in order to take care of the maturing obligations of United Railroads of San Francisco. This Commission will expect United Railroads of San Francisco to present a plan for meeting the obligations herein authorized to be incurred. A number of the important franchises of United Railroads of San Francisco will expire in and within a few years after 1929.

The earnings of United Railroads of San Francisco are such that if dividends are not paid on the stock a considerable portion of the maturing obligations of United Railroads of San Francisco can be paid from earnings.

On February 4, 1913, this Commission rendered its Decision No. 439 on Application No. 283, denying the application of United Railroads of San Francisco for authority to issue $2,350,000.00 6 per cent five-year notes to be used in the purchase of Market Street Cable Railway Company bonds and Park and Cliff House Railway Company bonds.

After referring to the absence of the original books of account of United Railroads of San Francisco for the years 1907, 1908, 1909, 1910, and 1911, to the necessity of having these books in order to determine satisfactorily the financial condition of United Railroads of San Francisco and to the absence of any satisfactory explanation as to why these books were not in the possession of their owner, United Railroads of San Francisco, and had not been submitted to the Commission, the Commission said (Vol. II, Opinions and Orders Railroad Commission of California, pp. 140, 147):

> "Upon the failure of applicant to produce the books, as requested, it was announced that no order would be made granting this application and in view of the fact that these books have not been

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produced, although ample time has been given, it is the conclusion of this Commission that this application should be denied and that it be understood that no favorable action will be taken by this Commission on any application presented by the United Railroads, or its subsidiaries, until the information demanded by the Commission has been furnished."

Mr. B. S. Guinness testified that he is and has been a director of the United Railroads of San Francisco and United Railway Investment Company, an officer of California Railway and Power Company and a partner of Ladenburg, Thalmann & Company. He testified that he had been informed that these books had been in the possession of Haskins & Sells, in New York, and that they had been delivered by Haskins & Sells to Patrick Calhoun or to a representative of Mr. Calhoun. These books are the property of United Railroads of San Francisco and not of Mr. Calhoun. The owners of this property knew, at least subsequent to the decision of February 4, 1913, that the Railroad Commission requires these books in order to ascertain the true financial condition of United Railroads of San Francisco. Mr. Guinness testified that he and his associates had asked Mr. Calhoun for the books but they had been put off. This Commission is not satisfied that the eastern owners of this property have made reasonable efforts to secure and produce these books. While it is not the function of this Commission to indicate to United Railroads of San Francisco and to the owners of its stock the precise means to be used to secure these books, the Commission will expect them to use every effort in their power, both legal and otherwise, to procure these books and return them to California to the possession of the United Railroads of San Francisco. A condition to this effect will be inserted in the order herein.

In view of the financial condition of United Railroads of San Francisco, in so far as it can be determined in the absence of the original books of account, herein referred to, the Commission can not authorize an issue of bonds of Market Street Railway Company to be used as collateral security, in excess of the face value of the notes to be issued by United Railroads of San Francisco, for the reason that such issue would, if the pledge were foreclosed, result in a substantial increase in the bonded indebtedness of United Railroads of San Francisco.

ORDER.

United Railroads of San Francisco having applied to the Railroad Commission for an order authorizing the issue, on or before October 15, 1916, of its 6 per cent gold notes of the face value of $1,800,000.00, maturing two years from the date of issue, and Market Street Railway Company having applied for an order authorizing the issue of its first mortgage 5 per cent gold bonds of the face value of $2,250,000.00, to be used as collateral security for said issue of notes, and a public hearing

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having been held on said applications, and the Railroad Commission finding that the purposes for which the proceeds of said issue of notes and bonds are to be used are not in whole or in part reasonably chargeable to operating expenses or to income.

It is hereby ordered as follows:

United Railroads of San Francisco is hereby authorized on or before October 15, 1916, to issue $1,800,000.00, face value, of promissory notes, bearing interest at the rate of 6 per cent per annum, maturing two years from the date of issue, and Market Street Railway Company is hereby authorized to issue $1,800,000.00, face value, of its 5 per cent first mortgage bonds, secured by a deed of trust or mortgage, dated July 12, 1894, from Market Street Railway Company to Union Trust Company of San Francisco, to be used as collateral security for said notes of $1,800,000.00 on the following conditions and not otherwise, to wit:

1. The proceeds from the issue of said $1,800,000.00 of promissory notes by United Railroads of San Francisco shall be used only for the purpose of purchasing and canceling the remaining outstanding bonds of Market Street Cable Railway Company in an amount not to exceed the sum of $1,800,000.00.

2. United Railroads of San Francisco and Market Street Railway Company shall not issue the notes and bonds herein referred to until the Railroad Commission has made a supplemental order reciting that United Railroads of San Francisco has produced its original books of account for the years 1907, 1908, 1909, 1910, and 1911, or that United Railroads of San Francisco has taken and is taking the necessary steps, legal and otherwise, to secure the return to its possession of said books.

3. United Railroads of San Francisco and Market Street Railway Company shall not issue the notes and bonds herein referred to until the Railroad Commission has made a supplemental order reciting that United Railroads of San Francisco has filed with the Railroad Commission a stipulation authorized by its board of directors and satisfactory in form, to the effect that during the life of said notes United Railroads of San Francisco will hold for or apply to the payment of said notes such portion of the net income of United Railroads of San Francisco as may be directed by the Railroad Commission.

4. United Railroads of San Francisco and Market Street Railway Company shall not issue the notes and bonds herein referred to until the Railroad Commission has made a supplemental order reciting the price at which said notes shall be issued.

Dated at San Francisco, California, this 11th day of December, 1915.

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DECISION NO. 2968.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR LEAVE TO ISSUE CERTAIN NOTES AND BONDS.

Application No. 1730.

Decided December 11, 1915.

REPORT OF THE COMMISSION.

FIRST SUPPLEMENTAL ORDER.

Whereas applicant was on the 20th day of November, 1915, by order of the Commission, authorized to issue its bonds and to pledge the same as collateral security for notes to be given by applicant to its stockholders for loans to be made by said stockholders to applicant, said bonds to be pledged on a basis of 80 per cent of face of notes to 100 per cent of bonds, and the bonds so to be pledged to be obtained from bonds now in pledge as collateral security for the notes now outstanding; and

Whereas applicant now represents that prior to the making of said order certain of its stockholders had advanced to said company $90,911.00, with the understanding that said stockholders should be treated as to said advances the same as other stockholders who might hereafter loan the company money; and

Whereas applicant now requests that said order be modified so as to permit applicant to give notes to said stockholders who have advanced said $90,911.00, and pledge bonds as collateral security for the payment of said notes on the basis of 80 per cent of face of notes to 100 per cent of face of bonds; and

Whereas applicant represents that it will have on hand only 41 bonds, obtained from pledge as aforesaid, and that in order to pledge bonds on the basis heretofore authorized it will be necessary to obtain the authorization of this Commission that 73 additional bonds, not now in pledge, be authorized to be issued; and

Whereas it appears that the $90,911.00 heretofore advanced by said stockholders has been used by applicant for capital purposes, and it appears just that if the stockholders who advanced this money, in reality loaned it to the company, they should be treated the same as stockholders who hereafter loan money to applicant; and

Whereas there is not now before this Commission sufficient proof upon which to base a conclusion as to whether said $90,911.00 was loaned to said applicant; and

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Whereas auditors of the Interstate Commerce Commission, after a careful examination of the applicant's books, are now and for the next several months will be, engaged in bringing about an adjustment of the company's books, and therefore it will be impossible for applicant to comply with that condition in the Commission's order which provides that a readjustment of its books shall be submitted to this Commission within sixty days; now, therefore,

It is hereby ordered that the order heretofore made herein on the 20th day of November, 1915, be and the same is hereby amended, and applicant is hereby authorized to issue promissory notes at face value, not to exceed a total face value of $90,911.00, to stockholders who have heretofore actually loaned applicant money which was used for capital purposes, and to issue 73 bonds not now in pledge, or obtained from pledge, or such number of said bonds as may be necessary, and to pledge such bonds as security for the payment of said promissory notes upon a basis of 80 per cent face of notes to 100 per cent face of bonds.

It is hereby further ordered that that provision in said order reading as follows:

> "*It is hereby further ordered* that the applicant shall, within sixty days, submit to this Commission for its approval, a readjustment of its books of account, to the end that such books of account shall show the true financial condition of this applicant,"

be and the same is hereby annulled.

In all other respects said order shall remain in full force and effect.

Dated at San Francisco, California, this 11th day of December, 1915.

DECISION NO. 2969.

COUNTY OF LOS ANGELES

vs.

PACIFIC ELECTRIC RAILWAY COMPANY.

Case No. 588.

Decided December 11, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant having on December 9, 1915, requested that the above entitled proceeding be dismissed,

It is hereby ordered that the same be and it hereby is dismissed.

Dated at San Francisco, California, this 11th day of December, 1915.

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DECISION NO. 2970.

CITY OF COALINGA

vs.

PLEASANT VALLEY WATER COMPANY AND COALINGA CONSOLIDATED WATER COMPANY.

Case No. 623.

IN THE MATTER OF THE APPLICATION OF PLEASANT VALLEY WATER COMPANY AND COALINGA CONSOLIDATED WATER COMPANY FOR PERMISSION TO INCREASE RATES FOR WATER FURNISHED TO THE CITY OF COALINGA AND THE INHABITANTS THEREOF.

Application No. 1341.

Decided December 11, 1915.

The Commission heretofore, in connection with the above entitled cases, established a schedule of rates for defendant companies. Defendants subsequently applied for a rehearing and after consideration of the evidence submitted in connection with such petition, the following schedule of rates is established to become effective January 1, 1916: For first 300 cubic feet or less, per month, $2.00; in excess of 300 cubic feet, 60 cents per 100. Minimum monthly bill, $2.00. Water sold to the city of Coalinga for fire purposes, $140.00 per month.

Henry S. Richmond and *Lamberson, Burke & Lamberson*, for City of Coalinga.

A. E. Shaw, for Pleasant Valley Water Company and Coalinga Consolidated Water Company.

REPORT OF THE COMMISSION.

THELEN, *Commissioner*.

OPINION ON PETITION FOR REHEARING.

This is a petition of Pleasant Valley Water Company and Coalinga Consolidated Water Company for rehearing on this Commission's order of January 13, 1915, in the above entitled proceeding (Vol. 6, Opinions and Orders of the Railroad Commission of California, p. 33).

The petition for rehearing was filed on January 26, 1915. On January 30, 1915, the Commission made its order extending the effective date of the order of January 13, 1915, until the decision on the petition for rehearing should be rendered. This matter was set down for the presentation of evidence and argument on the question whether a rehearing should be held, and considerable additional evidence was presented at a number of public hearings held in San Francisco and in Coalinga. As is usual in such proceedings, the parties stipulated that the evidence and argument thus presented should be deemed to be

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the evidence and argument which would be presented if a rehearing were granted.

For a general statement of the operations of Pleasant Valley Water Company and Coalinga Consolidated Water Company, reference is hereby made to the opinion of January 13, 1915.

Careful consideration has been given to the evidence presented on the rehearing, bearing on the fair value for rate making of that portion of the properties of Pleasant Valley Water Company and Coalinga Consolidated Water Company which are fairly chargeable to the service of hard water (as distinguished from distilled water) to the customers of Pleasant Valley Water Company, and to fire service to the City of Coalinga. In addition to other evidence presented, Mr. James Armstrong, one of the Railroad Commission's hydraulic engineers, presented an estimate of the cost of a substitutional system, capable of supplying the hard water necessary for domestic purposes and fire protection in Coalinga. This evidence is of value by reason of the fact that it is extremely difficult to determine on any rational basis how much of the property of Coalinga Consolidated Water Company (which property is used both in the service of water to the oil fields and in the service of water to Coalinga) is fairly chargeable to the Coalinga service. The service of water to the oil fields by Coalinga Consolidated Water Company is rapidly declining. On careful consideration of all of the evidence, I find as a fact that the fair value of the property of both water companies for the purpose of establishing rates for hard water sold by Pleasant Valley Water Company for domestic purposes and for fire protection in Coalinga is at the present time the sum of $89,556.00. A return on this property with interest at 10 per cent would be $8,955.60 annually and at 8 per cent $7,164.48 annually.

I find as a fact that a reasonable allowance for depreciation annuity, as affected by ultimate amortization, on the 6 per cent sinking fund basis, is $6,043.00.

Accompanying the marked decrease in the sale of water during the last few years has been a material decrease in operating and maintenance expenses. Eliminating interest charges, depreciation, Railroad Commission expenses and donations, the operating and maintenance expenses of Pleasant Valley Water Company, as reported by the company, have been as follows:

For the year ending July 31, 1914	$5,965 92
For the year ending July 31, 1915	4,972 01
For the year ending August 31, 1914	5,975 14
For the year ending August 31, 1915	4,898 62

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Similar reductions appear in the operating and maintenance expenses of Coalinga Consolidated Water Company. The saving in pumping expenses is particular noticeable, having been $1,783.50 for oil alone in the year 1913-1914. I find as a fact that, eliminating interest charges, depreciation, Railroad Commission expenses and donations, the sum of $8,000.00 is a reasonable annual allowance for operating and maintenance expenses for that portion of the Coalinga Consolidated Water Company's system which is fairly chargeable to the service of hard water for domestic purposes and water for extinguishing fires in the City of Coalinga and that, excluding the charges hereinbefore mentioned, $5,500.00 is a reasonable annual allowance for operating and maintenance expenses for that portion of the Pleasant Valley Water Company's system which is fairly chargeable to the same service.

An annual allowance of $500.00 will be made for amortizing the expenses of these hearings and Railroad Commission expenses.

Thus, the total amount to be earned annually by Pleasant Valley Water Company, including interest on the investment, is $28,998.60 if a return of 10 per cent is allowed, and $27,207.48 if a return of 8 per cent is allowed.

The gross revenue of the domestic hard water system of Pleasant Valley Water Company for the year ending July 31, 1915, was $20,361.05.

The rates of Pleasant Valley Water Company for hard water now in effect are as follows:

TABLE NO. I.

Present Rates for Hard Water.

0— 2,500 barrels per month	2	cents per barrel.
2,500— 3,500 barrels per month	1¾	cents per barrel.
3,500—12,000 barrels per month	1½	cents per barrel.
Over 12,000 barrels per month	1¼	cents per barrel.
⅝-inch and ¾-inch meter, monthly minimum for each house	$2.00	
Large meters, monthly minimum for each service	3.00	

The foregoing rates changed to terms of cubic feet are as follows:

TABLE NO. II.

Present Rates for Hard Water in Cubic Feet.

0—14,000 cubic feet per month, per 100 cubic feet	$0.3571
14,000—19,600 cubic feet per month, per 100 cubic feet	.3125
19,600—67,200 cubic feet per month, per 100 cubic feet	.2678
Over 67,200 cubic feet per month, per 100 cubic feet	.2232

Minimum monthly rate, $2.00 for 560 cubic feet.

The City of Coalinga pays $100.00 per month for fire service.

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After careful consideration, I find as a fact that the following rates are just and reasonable rates to be charged by Pleasant Valley Water Company for hard water:

TABLE NO. III.

Rates for Hard Water Herein Established.

1. For hard water sold for all uses except fire service:	
For the first 300 cubic feet or less, per month	$2 00
For all water in excess of 300 cubic feet, per 100 cubic feet	60
2. For water sold to the City of Coalinga for fire purposes	$140.00 per month.

On the basis of the water sold by Pleasant Valley Water Company for the twelve months ending October 31, 1915, these rates would have yielded an annual revenue approximately as follows:

1. Domestic water	$28,578 00
2. City of Coalinga, fire purposes	1,680 00
Total	$30,258 00

The increased rate herein established will probably result in a diminished use of water by the consumers of Pleasant Valley Water Company. Furthermore, the evidence shows that, due principally to a diminishing activity in the adjacent oil fields, a continuing decline exists in the City of Coalinga, with a corresponding decrease in the number of consumers of water from this water system. The result of the concurrent action of these two factors will undoubtedly be that Pleasant Valley Water Company will not derive a revenue during the ensuing year as large as the application of the rates herein established to the water sales for the year ending October 31, 1915, would indicate. While it is impossible to forecast with mathematical accuracy the exact effect which these two factors will have on the sale of water by Pleasant Valley Water Company, I am satisfied that the rates herein established are just and reasonable rates. However, if further decline in the population of Coalinga ensues, Pleasant Valley Water Company must prepare to bear part of the loss which will come to the company therefrom.

I submit the following form of order:

ORDER.

The Railroad Commission having heretofore, on January 13, 1915, made and filed its opinion and order herein, and Pleasant Valley Water Company and Coalinga Consolidated Water Company having thereafter petitioned for a rehearing, and the Railroad Commission having thereafter suspended the effective date of said order of January 13, 1915, pending its final conclusion on the petition for rehearing, and evidence and argument having been received at various public hearings on the question whether a rehearing should be granted, and the parties

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having stipulated that the evidence and argument thus submitted should be considered to be the evidence and argument which should be submitted in case a rehearing were granted, and the Railroad Commission having given careful consideration to all the evidence herein presented, and the matter being now ready for decision, the Railroad Commission hereby finds as a fact that the rates herein prescribed to be charged by Pleasant Valley Water Company are just and reasonable rates and that said Pleasant Valley Water Company's rates now charged for water are non-compensatory, in so far as they differ from the rates herein established.

Basing its order on the foregoing findings of fact and upon the additional findings of fact which are contained in the opinion which precedes this order,

It is hereby ordered as follows:

1. The petition of Pleasant Valley Water Company and Coalinga Consolidated Water Company for rehearing is hereby denied.

2. Pleasant Valley Water Company is hereby authorized to establish, effective January 1, 1916, the following rates for hard water (as distinguished from distilled water) to be sold to the City of Coalinga and the inhabitants thereof:

(*a*) For hard water sold for all uses except fire service:	
For the first 300 cubic feet or less, per month	$2 00
For all water in excess of 300 cubic feet, per 100 cubic feet	60
(*b*) For water sold to the City of Coalinga for fire purposes, per month	140 00

3. In case Pleasant Valley Water Company desires to avail itself of the rates herein established, the company shall file said rates with the Railroad Commission on or before December 27, 1915.

4. In all other respects Case No. 623 and Application No. 1341 are hereby dismissed.

5. The effective date of this order shall be January 1, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of December, 1915.

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Decision No. 2971.

IN THE MATTER OF THE APPLICATION OF THE SAN DIEGO AND SOUTHEASTERN RAILWAY COMPANY FOR AN ORDER AUTHORIZING CERTAIN INCREASES IN PASSENGER FARES AND FREIGHT RATES, AND FOR AUTHORITY TO ALTER CERTAIN RULES AND REGULATIONS AND CLASSIFICATIONS SO AS TO BRING ABOUT INCREASES IN FARES AND RATES.

Application No. 1752.

THE CITY OF CHULA VISTA

vs.

SAN DIEGO AND SOUTHEASTERN RAILWAY COMPANY.

Case No. 843.

Decided December 11, 1915.

Applicant, operating a system of steam and electric railways in the city of San Diego and vicinity, applies for permission to put into effect a general increase in both passenger and freight rates, contending that its present revenues are far below actual operating expenses. City of Chula Vista files a complaint attacking the passenger rates of the railway company between Chula Vista and San Diego.

Held. That a comparison of rates on the principal commodities moving over the lines of applicant shows that the present rates are less than those charged by other roads for like shipments moving an equal distance, and though comparisons are not a criterion of the justness or unjustness of a rate, the increases here asked for are justified and should be granted. As to passenger fares, that the increases asked for are justified with the exception that the one-way fares between San Diego, Third street and city limits shall remain at 5 cents and that one-way passenger fares to other points on the southern division shall base 2 cents per mile on electric lines and 3 cents per mile on steam lines over city limits instead of Thirty-first street.

Complaint of the City of Chula Vista dismissed.

H. H. Sanborn, R. G. Dilworth and *Arthur Rochl,* for Applicant.

Johnson W. Puterbaugh, for City of National City, Intervener.

F. B. Andrews, for City of Chula Vista, Complainant and Intervener.

Wright, Winnek & McKee, for Pacific Building Company, Intervener.

S. W. Sweitzer, for John Murtaugh et al., Intervener.

Riley & Hesketh, for Independent Stone Company, Intervener.

Geo. J. Leovy, for San Diego Stone Company, Intervener.

Chas. Crouch, for Fenton Sumption Barnes Company, Intervener.

O. T. Helpling, for Riverside Portland Cement Company, Intervener.

Report of the Commission.

Loveland, *Commissioner.*

Application No. 1752, filed by the San Diego and Southeastern Railway Company, hereinafter referred to as the company, seeks authority,

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under section 63 of the Public Utilities Act, to make a general revision of its freight tariffs, increasing practically all freight rates, class and commodity, and also revising its passenger tariffs, increasing many of its fares.

The application alleges that the company is not earning operating expenses, and that the increases in rates which it desires to put into effect will produce only sufficient revenue to cover such expenses and interest on unfunded debt without giving any consideration to return upon other capital invested in the property.

Case No. 843 is a complaint entered by the City of Chula Vista wherein it calls into question the reasonableness of the present passenger fares between San Diego and Chula Vista. It also places in issue the adequacy of the service being rendered between the two cities.

The application and the case were heard together and it was stipulated that all testimony and exhibits would be considered as applying to both proceedings.

The City of National City and City of Chula Vista intervened, protesting against the proposed increases in passenger fares and freight rates between those cities and San Diego. The Pacific Building Company and John Murtaugh et al., of San Diego, intervened and protested against proposed increase in fare of 5 cents to 10 cents between points within the city of San Diego and the eastern city limits. The Independent Stone Company, San Diego Stone Company and Fenton Sumption Barnes Company protested against proposed increases in rates on sand, gravel, stone, crushed rock, etc., from various points to San Diego and Coronado. Riverside Portland Cement Company protested against the granting of increases in cement rates. This last protest, however, was withdrawn at a subsequent hearing without evidence having been introduced.

The company prepared its case in great detail and presented for the Commission's consideration a mass of statistical information taken principally from its annual reports. These hearings extended over a period of six days resulting in 889 pages of transcript and the introduction of many exhibits both by the company and the interveners. Oral arguments were made by counsel and the case is now ready for disposition.

The issue is of great importance to the company and to the public, and although the company at this time is only contending for sufficient revenue to pay its operating expenses, it must necessarily disturb rates, many of which have been in effect for years. For the fiscal year ending June 30, 1915, the property failed to earn expenses by $86,287.21, and this application was presented in an effort to prevent future deficits.

The company's history, its capitalization and organization and certain elements entering into the value of its property are carefully set forth

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in our Decision No. 1383, Case No. 189, In the matter of ascertaining the value of the San Diego and Southeastern Railway Company (Vol. 4, Opinions and Orders of the Railroad Commission of California, page 539), rendered March 30, 1914. This decision is pertinent to these proceedings and therefore is quoted in part as follows:

"The San Diego and Southeastern Railway Company was incorporated under the laws of the State of California on March 2, 1912, to take over the properties and obligations of the San Diego and Cuyamaca Railway Company and the San Diego Southern Railway Company, both of which are now legally dissolved. The history of the physical properties which now constitute the San Diego and Southeastern Railway Company is interesting and intricate, and can be traced back as far as the years 1886 and 1887, when the first serious attempts were made by San Diego residents to give to their city a direct rail connection with the East. A complete investigation into the entire history of the company appears in the Commission's engineering department's valuation report, and it does not seem necessary to here review this history in all its details. It will suffice to say that the present company inherited the properties and obligations, as far as they were in existence, of the following prior companies:

Coronado Railroad Company, organized April 7, 1886.

National City and Otay Railway Company, organized December 28, 1886.

San Diego and Cuyamaca Railway Company, organized August 30, 1887.

Otay Railway Company, organized September 28, 1887.

San Diego, Cuyamaca and Eastern Railway Company, organized March 6, 1888.

National City and Otay Railway Company (Cons.), organized October 1, 1888.

San Diego Southern Railway Company, organized July 1, 1908.

San Diego and Cuyamaca Railway Company, organized July 19, 1909.

The present company is one of a group of San Diego organizations known as the 'Spreckels companies,' because of the predominance of J. D. Spreckels in their control. These companies are as follows:

San Diego Electric Railway Company;
Southern California Mountain Water Company;
Coronado Water Company;
San Diego and Coronado Ferry Company;
San Diego and Coronado Transfer Company;
United Light, Fuel and Power Company;
San Diego and Southeastern Railway Company;
San Diego and Arizona Railway Company;
Coronado Beach Company;
Hotel Del Coronado;
Coronado Tent City;
Coronado Plumbing Company.

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The same group of men occupy in general the same positions on the directorates and as officers of all these companies. They are as follows:

J. D. Spreckels, president;
W. Clayton, vice president and managing director;
H. L. Titus, secretary and attorney;
Claude Spreckels, treasurer;
B. M. Warner, general superintendent;
A. H. Kayser, general auditor;
Geo. Holmes, purchasing agent.

The first four, together with C. L. Bundy of Los Angeles, who represents a group of Los Angeles capitalists, constitute the board of directors of this company. This, the youngest of the group, is thus not entirely a Spreckels company, inasmuch as a considerable portion of the common stock of the company is held by Los Angeles people. The rest of the stock is held by John D. Spreckels.

The San Diego and Southeastern Railway Company comprises 73.54 main track miles of standard gauge steam and electric railways located in, and radiating in northerly, easterly and southerly directions from, the city of San Diego. The system consists of five principal units or branches of various lengths and is entirely confined within the limits of San Diego County.

The road as at present operated is divided into two divisions, the southern division (formerly the San Diego Southern Railway Company) and the eastern division (formerly the San Diego and Cuyamaca Railway Company). A statement of the total track mileage of the company is as follows:

In addition to the track mileage shown on this statement (73.54 miles of main track), the San Diego and Southeastern Railway Company operates an electric car over 1.55 miles of the San Diego Electric Railway Company's tracks in San Diego, making a total operated mileage of 75.09. Of this mileage there is operated by steam 61.76 miles and electrically 13.33 miles. The 13.33 miles consist of the 1.55 miles above mentioned of the San Diego Electric Railway Company's tracks and of 11.78 miles of main line on the southern division from the intersection of Thirteenth and L streets, San Diego, to Otay.

The character of the lands traversed by the various lines of this system may be divided into two general classes, viz, lands within incorporated cities, and suburban, rural and country lands. Of the first class there are six incorporated cities, being San Diego, National City, Chula Vista, Coronado, La Mesa and El Cajon. The character of these city lands does not correspond to what is usually understood by this term, and, instead of comprising built-up residence communities, the lands traversed are for the greater part sparsely built up, and in many cases merely low, marsh lands. The suburban territory reached by the lines of this company is constituted of small ranches and platted acreage tracts, including small unincorporated towns and villages of various sizes and improvements. The rural and country lands reached by the road are of various kinds and comprise orange and lemon groves, grain,

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farming, pasture, grazing, marsh, rocky, hilly, canyon and waste lands.

A considerable portion of the San Diego and Southeastern Railway, and principally the original National City and Otay Railway, is merely a suburban traction railway occupying city streets by virtue of franchises, and otherwise possessing very few rights of way. The length of track laid down totals approximately 16.7 miles.

As noted heretofore, this company operates with both steam and electricity. The electric portions of the road do a passenger business almost exclusively, while on the steam portion of the system freight constitutes the most important item of traffic on the road. The principal freight commodities seem to be stone, sand and other like articles, constituting more than 82 per cent of the total freight tonnage hauled by this road in the year ending June 30, 1913.

The San Diego and Southeastern Railway Company's authorized capital stock consists of 16,500 shares of common stock of the par value of $100.00 each, or a total authorized capitalization of $1,650,000.00. The entire authorized capital stock was issued as the purchase price for the properties of the San Diego Southern Railway Company and the San Diego and Cuyamaca Railway Company, the immediate predecessors in interest of the present corporation. Stock to the par value of $770,000.00 was paid for the Cuyamaca line and is now held by Los Angeles people, while stock to the par value of $880,000.00 was paid for the San Diego Southern property, and is held by John D. Spreckels, the president of the present company. There is no bonded indebtedness.

It seems pertinent to point out here the relation between the capitalization of this property and its value. The 'reproduction value' of the entire operative property, as will appear later, is estimated by the engineering department of the Commission at $2,285,874.61 and the 'present value' at $1,912,754.20, while the total capitalization has a par value of only $1,650,000.00. This is an unusual state of affairs with public utilities. We find as a rule that the capitalization is largely in excess of either cost or reproduction value. Looking at the company from this point of view, its financial condition appears to be quite satisfactory. It does not become necessary to trace the financial history of the predecessors of the present company back to the beginning, as the last consolidation of these roads undoubtedly squeezed out whatever water there may have been in former capitalizations.

It should also be added here that since the incorporation of the present company, on March 2, 1912, expenditures were made for additions and betterments totaling $259,519.04, of which $81,087.90 was expended for acquisition of rights of way, station grounds and real estate.

The company has declared no dividends since its organization, but the sum of $39,191.42 appears as a credit charge against profit and loss in the annual report of the company for the year ending June 30, 1913."

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The San Diego and Southeastern, as heretofore stated, was organized in 1912. For some years prior to the final consolidation the property was under two companies, the San Diego and Cuyamaca Railway Company and the San Diego Southern Railway Company. Exhibit No. 34 gives the combined income and expenditures of the properties for the years 1909, 1910, 1911 and 1912. A brief analysis of this period of four years is illuminating.

San Diego and Cuyamaca Railway Company.

San Diego Southern Railway Company.

Fiscal Years ending June 30, 1909, 1910, 1911 and 1912.

	1909	1910	1911	1912
Operating Revenues.				
Freight revenue	$91,605 20	$119,966 10	$155,573 99	$181,342 95
Passenger revenue	113,551 20	129,481 58	156,452 64	178,744 78
Other operating revenues	6,487 70	19,686 28	21,085 44	30,196 85
Total operating revenues	$211,644 10	$269,133 96	$333,112 07	$390,284 58
Operating Expenses.				
Maintenance of way and structures	$36,230 87	$44,851 76	$47,639 81	$64,309 22
Maintenance of equipment	31,550 22	45,802 41	53,918 64	63,494 11
Traffic	3,209 11	3,444 31	3,482 72	4,744 95
Transportation	81,986 23	94,777 10	110,880 17	130,239 12
General	20,018 66	20,182 21	22,229 30	27,403 41
Total operating expenses	$175,995 09	$209,057 79	$238,150 64	$290,190 81
Net profit	$35,649 01	$60,076 17	$94,961 43	$100,093 77
Nonoperating revenue	330 71	1,304 78	2,044 13	2,972 23
Total net profit	$35,979 72	$61,380 95	$97,005 56	$103,066 00
Taxes	5,216 01	5,897 91	7,505 42	12,720 00
Operating profit	$30,763 71	$55,483 04	$89,500 14	$90,346 00
Interest	$33,000 00	$21,250 00	$25,000 00	$6,250 00
Miscellaneous deductions	5,731 19	2,879 01	2,369 51	4,923 11
Net profit or deficit	*$7,967 48	$28,354 03	$62,130 63	$79,172 89

*Deficit.

Financial Exhibits Nos. 6 and 7 introduced at the hearings show **gross income from operation** and from other sources, together with the **expenses and fixed charges** for the years 1913, 1914 and 1915. From **an analysis of these** reports it is **possible** to accurately determine the **moneys received** and the disposition that has been made of the same.

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The following condensed statement gives a picture of the financial situation of San Diego and Southeastern Railway Company for the fiscal years ending June 30, 1913, 1914 and 1915:

	1913	1914	1915
Operating Revenue.			
Freight revenue	$231,363 00	$209,667 16	$159,872 12
Passenger revenue	171,733 64	131,717 85	120,024 73
Other operating revenue	25,597 34	24,318 35	25,536 57
Total operating revenue	$428,693 98	$365,703 36	$305,433 42
Operating Expense.			
Maintenance of way and structures	$86,997 14	$67,025 35	$99,820 72
Maintenance of equipment	75,163 85	69,653 80	63,176 69
Traffic expenses	7,404 08	4,047 77	8,060 60
Transportation expense	178,103 88	157,828 43	141,001 50
General expense	30,151 02	41,479 17	39,649 18
Transportation for investment—Cr.			*1,596 92
Total operating expense	$377,819 97	$340,034 52	$350,111 77
Net profit or deficit	$50,874 01	$25,668 84	*$44,678 35
Nonoperating revenue	319 50	2,716 23	3,589 77
Total net profit or deficit	$51,193 51	$28,385 07	*$41,088 58
Taxes	16,500 00	21,125 10	18,167 62
Operating profit or deficit	$34,693 51	$7,259 97	*$59,256 20
Interest on unfunded debts	$5,972 06	$13,364 87	$21,833 52
Miscellaneous deductions	5,238 22	2,177 62	5,197 49
Net profit or deficit	$23,483 23	*$8,282 52	*$86,287 21
Ratio of operating expense to gross operating revenue	88.1%	92.9%	114.6%
Ratio of operating expense and deductions to total income	91.5%	102.2%	127.8%

*Deficit.

It will be noted by comparing the two statements that the income and expenditures fluctuate very materially. In 1909 total freight revenue was $91,605.20; in 1913, it had risen to $231,363.00, and in 1915 dropped back to $159,872.12. In 1909 passenger revenue was $113,551.20, in 1912 it was $178,744.78, and in 1915, $120,024.73. The expenses show almost continual increases. Maintenance of way in 1909 was $36,230.87, in 1913, $86,997.14, and in 1915, $99,820.72; maintenance of equipment in 1909 was $34,550.22, in 1913, $75,163.85, in 1915, $63,176.69; conducting transportation (salaries of train crews, etc.) in 1909, $81,986.23, in 1913, $178,103.88, and in 1915, $141,001.50.

As indicated by Exhibits 6 and 7, the year 1913 resulted in a profit of $23,483.23, the year 1914, a loss of $8,282.52, and the year 1915 a loss of $86,287.21, or a net loss for the three years of $71,086.50. For the year 1915 the operating revenue was $44,678.35 less than the operating

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expenses. The company has no bonded indebtedness, but paid interest in the sum of $21,833.52 on its unfunded debt of $337,396.31 for the fiscal year 1915.

It is to be noted that the salaries and expenses of the general officers are not excessive. This is accounted for by the fact that these officers act for all of the Spreckels companies, receiving a part of their salaries from each company; the general superintendent, for instance, being allowed but $300.00 per annum by the San Diego and Southeastern Railway Company; other officials in like proportion.

Exhibit No. 10 gives scale of wages for 1912 and 1915 showing the increases granted to employees in the operating department for various classes of labor ranging from 6¼ to 39 per cent; for example: yard enginemen from $3.75 to $4.00 per day equals 6¼ per cent; passenger firemen from $2.50 to $3.00 per day equals 20 per cent; freight brakemen from $2.75 to $3.25 per day equals 18 per cent; passenger conductors (steam) from $3.50 to $4.25 per day equals 25⅞ per cent; freight firemen from $2.50 to $3.25 per day equals 30 per cent; roadmaster from $90.00 to $125.00 per month equals 39 per cent.

No attempt will be made to discuss all of the freight rates involved. Such a discussion of individual items would unnecessarily lengthen the report. A careful comparison of the proposed commodity rates on those commodities moving in sufficient quantities to affect the revenue has been made by our rate department and it is found that in nearly every instance the proposed rates are as low or lower than the rates charged on the same commodities by The Atchison, Topeka and Santa Fe Railway between points in southern California of equal distances. Referring particularly to the sand, gravel and crushed rock rates—the proposed rates being 30 cents per ton for distances under 5 miles, 40 cents under 10 miles, 47 cents under 26 miles and 54 cents under 46 miles. On the Santa Fe the rates on these commodities to and from San Diego are as follows:

From SAN DIEGO to—	Miles	Rate per ton	To SAN DIEGO from—	Miles	Rate per ton
Morena	5	$0 50			
Pacific Beach	6	50			
La Drillo	8	50	Selwyn	13	$0 40
Del Mar	23	50			
Cardiff	27	60	Linda Vista (sand		
National City	6	50	only)	14	45

The same situation is true of manure—the highest rate proposed by applicant is 60 cents per ton for 18.6 miles, San Diego to Santee, while the rate on this commodity between all stations, 30 miles and under, on the Santa Fe, is 65 cents per ton.

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Beet Pulp—S. D. & S. E.

From SAN DIEGO to—	Miles	Present rate per ton, wet or dry	Proposed rate per ton, dry only shipped
El Cajon	15.4	$0 50	$1 15
Santee	18.6	50	1 15
Foster	25.0	50	1 40

A. T. & S. F. Ry.

From SANTA ANA to—	Miles	Rate per ton, dry
El Toro	13	$1 20
Galivan	17	1 40
Serra	24	1 80

Feed (carload)—S. D. & S. E. Ry.

From SAN DIEGO to—	Miles	Present rate	Proposed rate
Chula Vista	8.7	$0 65	$0 90
Otay	11.9	70	1 00

A. T. & S. F. Ry.

From SAN DIEGO to—	Miles	Rate
La Drillo	8	$0 80
Selwyn	13	1 20

Lumber (carload)—S. D. & S. E. Ry.

From SAN DIEGO to—	Miles	Present rate		Proposed rate	
		Per 1,000 feet	Equal per ton	Per 1,000 feet	Equal per ton
El Cajon	15.4	$1 00	$0 60	$1 80	$1 08
Santee	18.6	1 25	75	2 00	1 20
Lakeside	21.7	1 25	75	2 10	1 26
Foster	25.0	1 50	90	2 20	1 32

A. T. & S. F. Ry.

From SAN DIEGO to—	Miles	Rate per ton
Linda Vista	14	$1 00
Sorrento	18	1 20
Del Mar	23	1 20
Cardiff	27	1 40

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Hay (carload)—S. D. & S. E. Ry.

To SAN DIEGO from—	Miles	Present rate	Proposed rate
Otay	11.9	$0 70	$1 00
Schnells	14.6	75	1 20
San Ysidro	15.8	1 00	1 20
Santee	18.6	1 05	1 30
Lakeside	21.7	1 10	1 35
Foster	25.0	1 15	1 40

A. T. & S. F. Ry.

To SAN DIEGO from—	Miles	Rate
Selwyn	13	$1 20
Linda Vista	14	1 20
Sorrento	18	1 40
Del Mar	23	1 40
Cardiff	27	1 60

Interveners protested vigorously against the increases on sand, gravel and rock, and introduced much testimony and many exhibits. The company also produced exhibits and by the testimony of its managing director reviewed the history of the rates. It appears that prior to November, 1912, the rate on these commodities to San Diego from practically all quarries was 50 cents per ton, the reduction in November, 1912, was to 40 cents per ton. This change, as testified to by Mr. Clayton, was made as a matter of policy to assist in the building up of San Diego and without careful consideration as to the effect it would have on the profits of the company; also it was implied when the reduction was made that same was to go to the consumer. The results have not proven satisfactory. The three principal shipping points are Barnes, Sweetwater Quarry and Spring Valley. The old rates and the proposed rates per ton are as follows:

From—	To—	Miles	Prior to November, 1912	November, 1912	Proposed
Barnes	San Diego	11.7	----------	$0 40	$0 47
Sweetwater Quarry	San Diego	13.2	$0 50	40	47
Spring Valley	San Diego	10.1	50	40	47

The company and the interveners made many comparisons of the proposed rates on rock, etc., with those in effect on the Southern Pacific Company, Santa Fe and Pacific Electric Railway, in California, also in the states of Oklahoma, Kansas, Illinois, Michigan and Iowa, but to determine the reasonableness of rates consideration must be given to all

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the elements surrounding the movement of traffic and not solely to the rates of railroads differently situated. A basis of rates entirely reasonable on the Southern Pacific Company or The Atchison, Topeka and Santa Fe Railway might be entirely too low on a system such as the San Diego and Southeastern.

Consideration must also be given as to whether or not the density of traffic and volume of business in the territory of the San Diego and Southeastern compare favorably with other lines. A comparison of The Atchison, Topeka and Santa Fe (carload), for fiscal year ending June 30, 1915, with the San Diego and Southeastern shows that the Santa Fe receives an average of $2.15 for each ton of freight handled, the average haul being 170.9 miles, while the applicant receives an average of .50889 per ton for an average distance of 13.37 miles.

Operating Revenue and Expenses, Both Freight and Passenger Trains.

	A. T. & S. F. (carload) per train mile	S. D. & S. E., per train mile
Operating revenue	$2 36	$0 72
Operating expenses	1 70	83
Net operating revenue	66	*11

*Less than actual operating expenses.

Protestants urge that under the advanced rates they can not sell their products at a profit. If this is so it is manifestly because of natural or other advantages possessed by their competitor; however, it is a well established rule that commissions can not make rates based solely upon the needs of the shipper.

It would seem that the proposed rates on sand, gravel and rock as set forth in the application are reasonable *per se* and should be permitted to go into effect. The other proposed freight rates, both class and commodity, and the rules and regulations governing same, have been carefully analyzed in connection with the testimony and exhibits. They have been compared with rates on other lines operating under similar conditions and apparently they are not excessive. It is, therefore, recommended that all of the proposed freight rates be permitted to go into effect subject to further investigation upon proper complaint that any individual rate or set of rates is excessive, discriminatory or unreasonable.

Passenger Fares.

The company proposes to place its passenger fares on a uniform basis, viz, 3 cents per mile for one-way fares with a minimum of 10 cents on the steam roads, and 2 cents per mile on the electric roads, with a minimum of 5 cents; the fares in connection with the electric lines

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between San Diego and outside points to be based on 5 cents to Thirty-first street, San Diego, plus 2 cents per mile from that point, adding the odd cents to make the next multiple of 5. The basis for the proposed commutation fares is:

1½ cents per mile for 20-ride family.
1¼ cents per mile for 60-ride family.
1 cent per mile for 60-ride individual.
¾ cent per mile for 46-ride children.

This adjustment will reduce all one-way fares on the eastern division (steam), between San Diego and Foster, and is expected to attract traffic which on account of the present rates of 4 and 5 cents per mile is now moving via automobile bus.

The present fare between Third street and city limits, both points in San Diego, is 5 cents, which the applicant seeks to increase to 10 cents. A witness testified that the 5-cent fare had been in effect since 1887, and it is shown in the first tariff filed with this Commission, effective December 28, 1908. Section 27 of the Public Utilities Act provides that not more than 5 cents shall be charged within the corporate limits of any city unless justified. It is not found that any justification has been shown for a change in this rate and, following previous decisions, it is recommended that authority to make this increase be denied.

The fares on the electric line between San Diego—city limits and all stations as far as Chula Vista, if the application were granted, would be increased by 5 cents, except at National City where the increase proposed is from 5 to 15 cents, at Sweetwater Junction from 10 to 20 cents, and at Chula Vista, Third street, from 15 to 25 cents. Between intermediate points there will be increases and decreases. The commutation fares will be somewhat increased. Testimony opposing the increases in fares was introduced by counsel representing National City, Chula Vista and the territory in San Diego located between Thirty-first street and city limits.

A situation is presented extremely difficult of solution. The San Diego and Southeastern Railway system is composed of seven lines, which were formerly independent, which were purchased by Spreckels Bros., in 1912, and consolidated, now forming the system of the applicant.

The exhibits and the sworn testimony of witnesses for applicant show that the earnings of the road for the year 1915 do not equal operating expenses by something over $64,000.00 and that the interest on the unfunded debt is about $22,000.00, making a total deficit of $86,000.00 for the year.

Applicant, as previously stated, does not ask for any returns upon the investment but only for operating expenses and interest on the

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unfunded debt. The increases asked in the freight rates have been most carefully considered by the Commission and have been found to be reasonable. Such increases in the freight rates will aggregate approximately $14,000.00 per annum, still leaving a deficit in net revenue and interest on unfunded debt of $72,000.00 per annum, which applicant asks be made up by increases in passenger rates. The one-way passenger rates on the line from San Diego to Foster are at present on a 4 and 5 cents per mile basis, and applicant believes that some reduction in these rates, or in other words, putting them upon a 3 cent per mile basis will result in such increased travel as to bring larger net returns. The Commission is of the opinion that such will probably be the result and approves the schedule of passenger rates asked for on the line to Foster, and also the changes proposed in the commutation rates on that line, some of which will result in slight advances.

Practically the only part of the system left, from which to realize the remainder of the deficit amounting to $72,000.00, is the line from San Diego to Otay and to Tia Juana, passing through National City, Sweetwater Junction and Chula Vista.

The testimony at the hearing developed the fact that in January, 1909, the city of National City granted to the San Diego Southern Railroad, the predecessor of applicant, a franchise to maintain a railway through the city. It was orally agreed between the board of trustees and the railroad that within five years from the date of the franchise there would be established a fare of 5 cents between National City and San Diego. In October, 1912, the trustees of National City requested that the 5 cent fare be put into effect and after a conference and some correspondence the rate was reduced from 10 to 5 cents, effective January 1, 1913. This change voluntarily made has not proven a success, the company alleging that the loss in revenue amounts to approximately $10,000.00 per annum. Applicant now requests that it be permitted to limit the 5 cent fare to Thirty-first street in San Diego, charge 10 cents to city limits, 10 cents to Eighth street in National City, and 15 cents to Twenty-fourth street in National City. These increases asked over present rates amount to from one hundred to two hundred per cent.

The Commission feels very deeply the obligation resting upon it to protect the interests of the residents along this line, many of whom have doubtless been led to settle there by reason of the promises made by applicant as to the fares they would be required to pay, but it is equally true that the Commission is under obligation to consider that applicant can not be expected to continue to serve the public at rates which return far less than operating expenses. The situation must be viewed from all of its different aspects and a decision arrived at which, while perhaps satisfactory to none, will as nearly as possible represent

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the equities of the situation. In viewing the matter in this way the Commission has not been unmindful of the fact that the operating expenses of this system have increased largely under the present management, but as the result of such increase in operating expense a greatly improved service has been given.

It might be that by operating this system as it was formerly operated, running less comfortable trains and cars with less frequency, some of the increases in passenger rates herein granted could be avoided, but on that point the Commission is inclined to believe that if the choice were left to the people who reside along and patronize this line either to return to the old service and accommodations and retain the fare of 5 cents or keep the present service and pay a fare of 10 cents, they would prefer the frequent trains and better service. If upon further consideration, however, the people of these towns are inclined to think differently, the Commission will be glad, upon an application for rehearing, to further consider this question. It should be remembered that but two of the original units of this system ever paid a dividend, and the testimony at the hearing showed that the amount paid in such dividends should have been properly expended in maintenance (see transcript, hearing of September 2, 1915, page 25), which would indicate that a return to the old abbreviated and unsatisfactory service might not result in applicant's earning operating expenses.

The Commission can not see its way clear to grant applicant all that it prays for at this time.

The ownership of the San Diego and Southeastern Railway Company rests with people who have very large interests in and about San Diego. The value of those interests, it will readily be granted, depends very largely upon the prosperity of the city of San Diego and that, in turn, depends upon the prosperity of the surrounding country. San Diego and territory contiguous thereto, in common with all other sections of the Pacific coast and indeed of the whole United States, has suffered in the past year or two by the general depression for which neither the public nor the public utilities which serve it are responsible. In justice and equity all should bear a share of the burden caused by the general business depression. In addition to this the freeze of January, 1913, which so injured the lemon trees as to largely reduce that crop, has affected not only the prosperity of the people but the freight and passenger revenues of applicant. No one will deny that all should help to bear a loss like this, resulting from the act of God.

Still another reason which may be given to justify the Commission in believing that applicant herein should bear its share of the loss incidental to its operation is that the whole system of transportation in and around San Diego is owned by the same interests that own the San Diego and Southeastern Railway, and a loss on one line is frequently a

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gain to another line. Furthermore, if the situation were new today, that is, if no lines of transportation existed in San Diego, it would be extremely doubtful if applicant, or any one seeking to engage in serving the public, would build such lines as they now exist, and, while it may be said that applicant did not build them but purchased them in their present arrangement, it is nevertheless true that applicant made such purchase knowing the situation as it is and is therefore as responsible for the duplication of facilities and for the ownership of non-compensatory lines as though it had built them.

The Commission has given careful consideration to the possibility of discontinuing operating of any portion of this system, with a consequent saving in operating expenses, but the only part of the system which could be so treated is the line from Coronado Junction to Coronado, of which line can be expected but little business in the future owing to the fact that the movement of rock, sand and other material for building streets in Coronado is practically completed, but the testimony shows that the operation over this line, at the present time, is intermittent—a train being run only when it is necessary, and that the upkeep is very small so that practically but little saving could be made by its abandonment.

It is, perhaps, elementary to say that if the territory through which a road runs produces but little traffic it stands to reason that that road must charge rates high enough to support it, otherwise it will go out of existence. This statement, however, is qualified by the recognized truth that the patrons of public utilities, because of the small amount of business they are able to offer the company, may be absolutely unable to pay such rates as would return to the company even operating expenses, to say nothing of returns upon the investment. The circumstances surrounding each case must be carefully considered and final judgment based upon the facts presented in each case. If, as shown by the record in this case, it appears that the revenues of the utility have been larger in the past and may be expected to be larger in the future such utility may well be expected to share with its patrons the results of the present depressed condition. This principle is announced by Commissioner Thelen of this Commission in the case of *W. J. Rogers and Central Pacific Land and Lumber Company* vs. *Sacramento Valley West Side Canal Company and William F. Fowler, receiver of the property of Sacramento Valley West Side Canal Company,* Case No. 597, and in Sacramento Valley Realty Company et al. versus same defendants as above, Case No. 673. I quote the principle as laid down by Commissioner Thelen and his citations in support thereof:

> "Another element which must be taken into account in establishing the rates in this case is the ability of the consumer to pay. It is a well established principle of public utility regulation that

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whatever rates might be secured from the application of the usual principles of valuation, a public utility can in no event charge a rate which is beyond the reasonable ability of its consumers to pay. The rates must be reasonable to the utility, but they must, in any event, be reasonable to the public.

In *Covington and Lexington Turnpike Road Co.* vs. *Sanford,* 164 U. S. 578, the Supreme Court of the United States was considering the reasonableness of maximum rates to be charged by the Covington and Lexington Turnpike Road, as established by the general assembly of Kentucky. At page 596, Justice Harlan says:

> 'The public can not properly be subjected to unreasonable rates in order simply that stockholders may earn dividends.'

Again on the same page:

> 'If a corporation can not maintain such a highway and earn dividends for stockholders, it is a misfortune for it and them which the constitution does not require to be remedied by imposing unjust burdens upon the public.'

In the leading case of *Smythe* vs. *Ames,* 169 U. S. 464, the same learned justice, at page 547, says:

> 'What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.'

These cases clearly establish the principle that the rates to be charged by a public utility must in no event be higher than the service is reasonably worth to the public. It is unnecessary for me to point out that they do not hold that the utility can charge up to the maximum of what the consumer can pay.''

The Commission accepts with regret the necessity for approving an advance in the fare to National City in view of the direct promise of applicant to make that fare 5 cents, but is forced to the conclusion that a careful analysis of all of the circumstances of the situation will justify the decision reached herein.

The findings and order will be made without prejudice to further investigation by this Commission as to reasonableness of rates and fares approved herein after the results are known.

As before stated, the Commission can not see its way clear to grant all that applicant asks, but feels that the equities of the situation demand that authorization be given to increase the freight rates, also the passenger fares, with the exception that the passenger fares based on two cents per mile from city limits station instead of Thirty-first street, San Diego. This will result, as before stated, in an increase in applicant's earnings on freight traffic of $14,000.00, and on passenger traffic of $32,000.00, or a total of $46,000.00, still leaving $40,000.00 of the deficit in earnings to be borne by applicant. In view of the fact,

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however, that the lemon crop will nearly approach a normal condition in 1916; that the competition from jitneys will probably be reduced by the regulations now imposed upon them by ordinance, and the further and more important fact that indications now point to an improvement in general conditions all over the country, the Commission believes that that part of the deficit which it is now deciding must be borne by applicant will be greatly reduced, if not entirely wiped out.

In Case No. 843, the City of Chula Vista applied for reductions in the single fares and in the commutation fares, also for an improved train service. The testimony introduced does not sustain the case. Under the present conditions, with the company earning less than its operating expenses, it is obvious that the fares should not be reduced. The contention that the service is inadequate has not been sustained by the evidence, neither is it proven that cars are overcrowded except on occasional trips during the rush hours of the day, and this is a condition existing on all roads operating in large cities for which satisfactory remedies have not in all cases been devised. I recommend that Case No. 843 be dismissed.

I submit the following form of order:

ORDER.

The San Diego and Southeastern Railway Company having filed its Application No. 1752 for authority to increase certain class and commodity freight rates, and to increase passenger fares, also to change the rules and regulations governing the same; and the city of Chula Vista having filed its complaint in Case No. 843 and by agreement these cases having been combined, and a hearing thereon having been held, and being fully apprised in the premises,

It is hereby ordered that Application No. 1752 be and the same is hereby granted, with the exception that the one-way passenger fare between San Diego, Third street and city limits, shall remain at 5 cents and that the one-way passenger fares to other points on the Southern Division shall base 2 cents per mile for electric road mileage and 3 cents per mile for steam road mileage over city limits instead of over Thirty-first street, San Diego.

It is further ordered that Case No. 843, city of Chula Vista, be dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of December, 1915.

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DECISION No. 2972.

CITY OF SONOMA

vs.

SONOMA CITY WATER WORKS COMPANY ET AL.

Case No. 734.

Decided December 11, 1915.

C. C. Cowgill, for Complainant.

Frank Sprague, for Defendants.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The above entitled matter having come on regularly for hearing at Sonoma, California, on the tenth day of December, 1915, and complainant having moved this Commission for an order dismissing complainant's complaint herein without prejudice, to which motion no objection was offered by the defendants herein,

It is hereby ordered that the proceeding herein be and the same is hereby dismissed without prejudice.

Dated at San Francisco, California, this 11th day of December, 1915.

DECISION No. 2973.

IN THE MATTER OF THE APPLICATION OF UNITED RAILROADS OF SAN FRANCISCO FOR AN ORDER AUTHORIZING THE ISSUE OF ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS SIX PER CENT TWO-YEAR NOTES.

Application No. 1992.

IN THE MATTER OF THE APPLICATION OF MARKET STREET RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF FIVE PER CENT GOLD BONDS OF THE FACE VALUE OF TWO MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS.

Application No. 1993.

Decided December 13, 1915.

REPORT OF THE COMMISSION.

SUPPLEMENTAL ORDER.

Representation having been made to the Railroad Commission that doubt exists concerning the meaning of the second proviso of this

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Commission's order of December 11, 1915, in the above entitled proceedings, which proviso reads as follows:

> "2. United Railroads of San Francisco and Market Street Railway Company shall not issue the notes and bonds herein referred to until the Railroad Commission has made a supplemental order reciting that United Railroads of San Francisco has produced its original books of account for the years 1907, 1908, 1909, 1910 and 1911, or that United Railroads of San Francisco has taken and is taking the necessary steps, legal and otherwise, to secure the return to its possession of said books";

It is hereby ordered that said proviso be and the same is hereby amended to read as follows:

> "2. United Railroads of San Francisco and Market Street Railway Company shall not issue the notes and bonds herein referred to until the Railroad Commission has made a supplemental order reciting that United Railroads of San Francisco has produced its original books of account for the years 1907, 1908, 1909, 1910 and 1911, or that United Railroads of San Francisco has taken and is taking all reasonable steps, by legal process or otherwise, to secure the return to its possession of said books."

In all other respects said order of December 11, 1915, shall remain in full force and effect.

Dated at San Francisco, California, this 13th day of December, 1915.

Decision No. 2974, grade crossing; not printed. See end of volume.

DECISION No. 2975.

ALAMEDA IMPROVEMENT CLUB

vs.

SAN FRANCISCO-OAKLAND TERMINAL RAILWAYS.

Case No. 844.

Decided December 15, 1915.

Complainant petitions the Commission to compel defendant company to construct and operate a street car line along Santa Clara avenue from Webster street to Third street, and the evidence submitted showing that a considerable number of the residents of this district are already served by a car line less than two

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blocks distant, and that the estimated revenue to be received from the remainder would be far less than the cost of operating the proposed extension, complaint dismissed.

Ray W. Ryder, for Complainant.

W. H. Smith, for Defendant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

The complainant in this action is an association for the promotion of such public improvements as are calculated to materially benefit the city of Alameda. The complaint alleges that there is a district in the city of Alameda, bounded on the east by Webster street, on the south and west by San Francisco Bay and on the north by the Oakland Estuary, which is entirely without street car service and that approximately 2,500 people are inconvenienced by reason of the lack of such transportation. The complainant prays for an order of this Commission which will compel the San Francisco-Oakland Terminal Railways to construct a single track line of railway from the intersection of Webster street and Santa Clara avenue in the city of Alameda, westerly along said Santa Clara avenue to its intersection with Third street, a distance of 3,300 feet, thereby affording connection with the existing street car lines of the defendant. The defendant filed its answer denying the material allegations of the complainant.

A public hearing was held on November 10, 1915, and the matter was submitted and is now ready for decision.

The entire district comprising that portion of the city of Alameda as specified in the complaint contains 534 houses, of which number 16 were vacant on September 28, 1915, the date that the survey of the district was made. There is also a factory employing approximately 50 men, located within the district. The area contained in the westerly portion of the district named in the complaint is as yet not subdivided and the streets are not opened, the land being used for agricultural purposes such as the growing of vegetables. There are 38 blocks in this portion of the district which are not yet improved and are principally devoted to the raising of vegetables and garden truck.

In my opinion a walk of two blocks is not an unreasonable distance for the patrons of a street car line and under such condition the persons residing in the portion of the district bounded by Buena Vista avenue, Webster street, Fifth street and Taylor avenue and also in the block bounded by Central avenue, Sixth street, Taylor avenue and Webster street are served by the defendant's street car line on Webster street, a total of 256 houses. Deducting this number of houses from the total of 534 houses which were found to be located in this district there would be 278 houses outside the reasonable walking distance of

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two blocks. Assuming five residents to each household who would desire and use street car transportation, and adding the 50 employees of the factory located within the district, there would be a total of 1,440 persons in the district who are located more than two blocks from existing car service.

The defendant presented an estimate of the cost of constructing the line on Santa Clara avenue from the intersection with its present car line on Webster street, westerly along Santa Clara avenue to the intersection of Third street, showing the cost of construction to be $22,388.05. This estimate has been checked by the Commission's representatives and is found to be reasonable for the type of construction proposed.

The expense of operating this line after construction on the basis of an 18-hour day and covering wages of platform men, cost of power, car inspection and repairs, lubrication, etc., would amount to $7,222.40 per annum. The cost of track and overhead maintenance, proportion of supervisory expense, state taxes at 5¼ per cent of gross revenue, franchise tax of 2 per cent of gross revenue, and a reasonable interest return on the investment, would practically double the cost estimated for actual car operation, making a total annual expense of approximately $14,450.00. On the basis of the line serving 1,440 persons who are now located at a greater distance than two blocks from an existing car line and who would use the transportation furnished by the proposed extension, and multiplying such number by the factor of $7.50 per capita per annum, which is commonly used by traction experts, the extension of line could reasonably be expected to earn a gross revenue of $10,800.00 per annum, which amount would not equal the cost of maintenance and operation and a reasonable interest return on the investment by $3,650.00. I am of the opinion that the usual factor of $7.50 per capita per annum would not apply to this territory and that the actual loss would, therefore, approximate a considerably larger amount.

I am convinced that the construction of the extension requested is not justified by the foregoing facts and accordingly recommend that the complaint be dismissed.

I hereby submit the following form of order:

ORDER.

The case of *Alameda Improvement Club* vs. *San Francisco-Oakland Terminal Railways* for an extension of car line in the westerly portion of the city of Alameda having been duly heard and the Commission being fully advised in the premises,

It is hereby ordered that the complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of December, 1915.

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DECISION No. 2976.

IN THE MATTER OF THE APPLICATION OF CORONA HOME TELEPHONE AND TELEGRAPH COMPANY FOR PERMISSION TO ISSUE STOCK.

Application No. 1957.

Decided December 15, 1915.

Applicant, operating a telephone system in the city of Corona, applies for permission to issue 16 shares of its capital stock in lieu of 16 shares heretofore issued, proceeds of which were used in making certain extensions. This application was subsequently amended to include stock to cover cost of proposed extensions and improvements to plant and it appearing that such request is reasonable, as regards extensions, applicant authorized to issue 16 shares in lieu of those heretofore issued without authorization and also to issue 200 shares to cover cost of proposed extensions, the latter to be issued only under supplemental order. Application as regards the issuance of shares for proposed improvements to plant denied pending more definite arrangements with regard thereto.

W. S. Clayson, for Applicant.

REPORT OF THE COMMISSION.

The above application is for permission to issue 16 shares of stock in lieu of 16 shares which were heretofore issued without authority of the Railroad Commission, in ignorance of the fact that such authority is necessary to its validity.

Applicant supplies telephone service to the residents of Corona and vicinity. The bulk of its business lies within a radius of three miles from its exchange in Corona. In several instances, however, its lines extend several miles into the surrounding country.

Applicant was organized December 6, 1905, and has a capital stock of 5,000 shares of the par value of $10.00 each, of which shares 758¼ remain in its treasury unsold. It has an authorized bonded indebtedness of $50,000.00, of which $41,100.00, face value, has been issued and is now outstanding and $8,900.00, face value, remains in its treasury unsold.

One certificate for 4 shares of stock was issued to Doctor Brown June 18, 1912, and one certificate for 12 shares to W. D. Richards was issued June 28, 1913, both being sold at par to cover cost of extending certain of the lines of applicant into outlying territory.

Applicant has from time to time requests to make similar extensions and has under consideration at the present time such a request for an extension of its lines for about seven miles, at an estimated cost of about $300.00.

It was suggested to applicant at the hearing that if desired, the present application might be so amended as to request authority for

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issuing other stock to cover such extensions in the near future. This was accordingly done.

It also developed at the hearing that applicant is considering the making of substantial improvements in its system and service, by enlarging the size of its building, enlarging its switchboard facilities and increasing the size of its cables so that it may take care of the growing demand upon it for telephone service.

While applicant has not considered in detail the cost of such improvements, nor received estimates or bids therefor, it was stated that an investment of from $4,000.00 to $5,000.00 would probably be required for these purposes.

It has been generally understood by the officers and directors that these improvements would be financed through the earnings of the company and the passing of dividends for that purpose. At the hearing, however, applicant also asked authority to issue sufficient stock from its treasury to finance these improvements, if that course should be desired by applicant upon further consideration.

In Decision No. 2790, in Case No. 660, entitled *"City of Corona* vs. *Corona Home Telephone and Telegraph Company et al.,"* decided September 30, 1915, this Commission had before it the question of rates, service, rules and regulations of defendant, in which was carefully considered the value of applicant's plant, its revenues, operating expenses and earnings.

From the testimony presented at the hearing of this application, and that at the hearing of the above case and the data used in connection therewith, we have reached the conclusion that application for authority to issue stock in lieu of that already issued should be granted. Future proposed similar extensions to be financed by the issue of stock provided for that purpose in the order herein, will hereafter be considered by the Commission upon informal applications from time to time, and with the aid of the information and data submitted at the two hearings already had, can probably be disposed of without further hearings.

As to means of financing improvements in switchboard, cables and buildings, this matter can be more satisfactorily handled upon a separate formal application in connection therewith when occasion arises. That portion of the application relating to the issue of stock for the latter class of improvements will at present be denied without prejudice, the matter to be given full consideration if and when future application is made.

ORDER.

Corona Home Telephone and Telegraph Company having applied to the Railroad Commission of the State of California for authority to issue 16 shares of its capital stock in lieu of 16 other shares issued

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without the authority of this Commission, and having subsequently amended its application to include a request for permission to issue additional stock for the purpose of making future extensions of its lines and for making improvements in its facilities and service, and a hearing having been held upon said application, and it appearing that the purposes for which applicant wishes to issue said stock are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered that Corona Home Telephone and Telegraph Company be and it is hereby authorized to issue to Arthur L. Brown, M.D., certificate or certificates for 4 shares of its capital stock in lieu of and upon surrender and cancellation of Certificate No. 262 for 4 shares of its stock issued to him June 18, 1912; and to issue to W. D. Richards certificate or certificates for 12 shares of its capital stock in lieu of and upon surrender and cancellation of Certificate No. 268 for 12 shares of its stock issued to him June 28, 1913; said present certificates to be surrendered and canceled and said new certificates in lieu thereof issued on or before February 1, 1916.

It is further ordered that Corona Home Telephone and Telegraph Company be and it is hereby authorized to issue, from time to time, prior to February 1, 1918, at not less than par, upon receipt of supplemental order herein, not exceeding two hundred shares of its capital stock for the purpose of making extensions in its lines and service.

Within thirty days after the issue of any stock herein authorized, Corona Home Telephone and Telegraph Company shall report to this Commission the fact of the issue, the names of the persons to whom said stock was issued, the number of shares issued to each person and the price at which said stock was issued.

Dated at San Francisco, California, this 15th day of December, 1915.

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Decision No. 2977.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF THE SAN FRANCISCO AND NAPA RAILWAY COMPANY WITHIN THE STATE OF CALIFORNIA.

Case No. 202.

Decided December 15, 1915.

Report of the Commission.

ORDER OF DISMISSAL.

The subject matter of this proceeding being covered by Case No. 204, being a similar proceeding to ascertain the value of the property of Southern Pacific Company,

It is hereby ordered that Case No. 202 be and the same is hereby dismissed.

Dated at San Francisco, California, this 15th day of December, 1915.

Decision No. 2978.

IN THE MATTER OF THE APPLICATION OF WILLIAMS WATER AND ELECTRIC COMPANY FOR PERMISSION TO ISSUE STOCK.

Application No. 1869.

Decided December 17, 1915.

Applicant applies for and is granted permission to issue 4,354 shares of stock of the par value of $1.00 per share, such stock to be issued at not less than par, proceeds to be used for additions and betterments.

C. K. Sweet, for Applicant.

Report of the Commission.

In this application Williams Water and Electric Company asks authority to issue $4,354.00 par value (4,354 shares of the par value of $1.00 per share) of capital stock. The stock sought to be issued is to be issued for the following purposes:

1. Three thousand five hundred ninety-nine (3,599) shares to be issued to C. K. Sweet to reimburse him for $3,599.00 advanced by him to the company and expended by the company for betterments to its property.

2. Seven hundred fifty-five (755) shares to stockholders of Williams Water and Electric Company, the same being issued as a stock dividend, $755.00 of the net income of the company having been used for the improvement of the company's property, instead of being distributed as dividends to the stockholders.

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Applicant was incorporated April 15, 1909, with an authorized stock issue of $25,000.00, divided into 25,000 shares of the par value of $1.00 per share. At present, 4,351 shares of the stock are issued. Under agreement to issue stock at par in return therefor, the president of the company has advanced money in the sum of $3,599.00 to the company for the improvement of the plant, and $755.00 of the net earnings of the company have been invested by the company for the same purpose.

A detailed statement of the use to which these funds were put was filed by the applicant and was carefully checked and approved by the hydraulic engineers of the Commission. The company's investment, as shown by the annual report of the company, revised by the auditing department of the Commission, is as follows:

Plant investment December 31, 1910	$6,356 84
Plant investment December 31, 1911	861 56
Plant investment December 31, 1912	759 96
Plant investment December 31, 1913	379 13
Plant investment December 31, 1914	377 26
Total	$8,734 75
Less depreciation	129 10
Net	$8,605 65

Against the investment of $8,605.65, applicant reports liabilities as follows:

Stock	$4,351 00
Accounts payable	3,670 39
Depreciation reserve	207 00
Corporate surplus	377 26
Total	$8,605 65

From the foregoing financial statement it will be observed that the assets of the company are sufficient to justify the issue of the stock sought by applicant, and it further appears that the money advanced by the president of the company and the funds which should have been distributed as dividends have been carefully invested, to the end that the company has received full value therefor.

Applicant has, by a resolution of the stockholders thereof, asked the Commission to issue the stock in the following manner:

Mrs. D. E. Welch	17 shares
Oscar Robinson	347 shares
C. K. Sweet	390 shares
C. K. Sweet (on account of money advanced)	3,599 shares
Treasury stock	1 share

The reason for asking that one share of treasury stock be issued, is that the interest of each of the stockholders in the fund which has

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been invested, and for which they are to receive stock, will result in a fractional share to each stockholder, and will thereby entail bookkeeping on the corporation disproportionate to the amount involved.

The issue of this share of stock would serve no purpose to the corporation, and it therefore seems advisable to the Commission that the corporation continue to credit each stockholder with the amount of his interest therein until such time as occasion may arise for the company to cancel its obligations to its stockholders.

ORDER.

Williams Water and Electric Company having applied to this Commission for authority to issue stock, as hereinbefore set forth, and a public hearing having been held thereon, and it appearing to this Commission, and the Commission hereby finds as a fact, that applicant's request is reasonable and should be granted, and that the purposes for which it is proposed to issue said stock are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Williams Water and Electric Company be and it is hereby authorized to issue 4,354 shares of its capital stock, as follows:

C. K. Sweet	390 shares
C. K. Sweet (on account of money advanced)	3,599 shares
Mrs. D. E. Welch	17 shares
Oscar Robinson	347 shares

The authority herein granted is granted upon the following conditions, and not otherwise:

1. The stock herein authorized to be issued shall be issued so as to net applicant not less than its par value of $1.00 per share.

2. Within thirty days after the issue of any of the stock herein authorized, applicant shall make report of such issue to this Commission.

3. The authority herein granted shall apply only to such stock as shall have been issued on or before February 1, 1916.

Dated at San Francisco, California, this 17th day of December, 1915.

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Decision No. 2979.

IN THE MATTER OF THE APPLICATION OF ISAIAH HARTMAN FOR PERMISSION TO FIX THE WATER RATES OF LORENZO WATER COMPANY.

Application No. 1916.

Decided December 17, 1915.

Applicant applies for permission to increase water rates to his consumers in the town of Boulder Creek, and it appears that the present rates are reasonable, but that owing to the excess amounts of water used by certain of the consumers, the establishment of a meter rate is deemed advisable. The following rates established to become effective within twenty days: Flat rate, $1.25 per month; measured rate, 20 cents per 100 for first 500 cubic feet; 15 cents per 100 for next 2,500 cubic feet; 10 cents per 100 in excess of 3,000 cubic feet per month; minimum monthly bill, $1.25; street sprinkling, $30.00 per year.

Isaiah Hartman, for Applicant.

Report of the Commission.

This is an application for an increase in rates charged for water furnished the residents of the unincorporated town of Lorenzo, adjoining Boulder Creek, Santa Cruz County.

Isaiah Hartman, hereinafter referred to as the applicant, seeks permission to apply the rate schedule fixed by the trustees of the town of Boulder Creek in their Ordinance No. 88, which ordinance was enacted in the year 1911 and was never thereafter re-enacted, and which provided for a substantial increase over the present uniform rate of the Lorenzo Water Company of $1.25 per month for each consumer.

A public hearing was held in this proceeding on November 15, 1915, at Boulder Creek. At the hearing, some objections were made by the consumers to the proposed increase in rates, on the ground that the present rates were excessive, considering the service received, which they claimed to be inadequate.

This Commission's Decision No. 2896, "In the matter of the application of Isaiah Hartman, a public utility operating under the name of Lorenzo Water Company, to sell its water system to Jacob Hartman," shows the following values:

Cost new	$3,951
Annual depreciation	125
Cost less accrued depreciation	2,064

No additions have been made to the system since this appraisal was made, and all the property included in that appraisement is now in

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use. It was stipulated at the hearing that the evidence in the above mentioned proceeding may be considered as a part of the evidence herein.

The Commission's hydraulic engineers submitted an estimate of annual maintenance and operation expenses amounting to $410.00. No other estimate was submitted, and no exception was taken by the applicant.

From the facts in the case it appears that from the present rates a fair return is being realized by the company, but that owing to the fact that no meters have been installed, a number of the consumers have been using excessive quantities of water for purposes not comprehended in the supplying of water for domestic purposes. This evil ought to be corrected, and the only way it can be done is by installing meters and fixing a schedule of rates which will include a charge for metered service. Meter rates not having been in effect in the past, the result of any rate by measurement is more or less problematic, and must be considered experimental.

ORDER.

Application having been made by Isaiah Hartman for permission to fix the rates charged by him to consumers for water, and a public hearing having been held and the matter having been submitted, it is hereby found as a fact by the Railroad Commission of the State of California, that the rates charged for water by Lorenzo Water Company to its consumers, in so far as they differ from the rates set out in this order, are unjust and unreasonable, and that the rates set out in this order are just and reasonable, and basing its order on the foregoing finding of fact, and the findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California that the Lorenzo Water Company put into effect the following schedule of rates to be charged for water supplied its consumers:

Monthly Rates.

Unmetered service.

$1.25 per month, flat rate.

Metered service.

For the first 500 cubic feet, 20 cents per 100 cubic feet.
For the next 2,500 cubic feet, 15 cents per 100 cubic feet.
All use in excess of 3,000 cubic feet, 10 cents per 100 cubic feet.
Minimum charge, $1.25.
Street sprinkling, $30.00 per year.

Dated at San Francisco, California, this 17th day of December, 1915.

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DECISION NO. 2980.

IN THE MATTER OF THE APPLICATION OF LONG BEACH CONSOLIDATED GAS COMPANY FOR LEAVE TO FILE A SCHEDULE OF RATES FOR GAS, MODIFYING AND CHANGING ITS EXISTING SCHEDULE NOW ON FILE.

Application No. 1981.

Decided December 17, 1915.

REPORT OF THE COMMISSION.

On written application of Long Beach Consolidated Gas Company, and written protest from the city of Long Beach, and good cause appearing,

It is hereby ordered that the order of December 2, 1915, in the above entitled proceeding be and the same is hereby annulled, and that the rates of Long Beach Consolidated Gas Company heretofore in effect for gas served in the city of Long Beach, namely, the rate of one dollar ($1.00) per thousand cubic feet, with a monthly minimum charge of fifty (50) cents be and the same is hereby restored effective December 1, 1915.

Dated at San Francisco, California, this 17th day of December, 1915.

DECISION NO. 2981.

IN THE MATTER OF ASCERTAINING THE VALUE OF THE PROPERTY OF THE SAN FRANCISCO, VALLEJO AND NAPA RAILROAD WITHIN THE STATE OF CALIFORNIA.

Case No. 147.

Decided December 17, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The subject matter of this proceeding being covered by Case No. 322, being a similar proceeding to ascertain the value of the property of San Francisco, Napa and Calistoga Railway Company,

It is hereby ordered that Case No. 147 be and the same is hereby dismissed.

Dated at San Francisco, California, this 17th day of December, 1915.

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DECISION No. 2982.

IN THE MATTER OF THE APPLICATION OF OAKLAND, ANTIOCH AND EASTERN RAILWAY FOR LEAVE TO ISSUE CERTAIN NOTES AND BONDS.

Application No. 1730.

Decided December 18, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas the order of November 20, 1915, in the above entitled proceeding, recites in paragraph 10 thereof that "the bonds hereby authorized to be issued shall be only such bonds as are now pledged as collateral security for the applicant's note indebtedness"; and

Whereas the Railroad Commission, on reconsideration, adheres to the conclusion thus expressed,

It is hereby ordered that the first supplemental order herein, dated December 11, 1915, be and the same is hereby vacated and set aside in so far as it authorizes the issue of bonds in excess of the bonds authorized in the order of November 20, 1915.

It is further ordered that the order of November 20, 1915, except in so far as modified by that portion of the order of December 11, 1915, which is not herein vacated and set aside, shall remain in full force and effect.

Dated at San Francisco, California, this 18th day of December, 1915.

DECISION No. 2983.

GEO. FINK ET AL.

vs.

SAN JOAQUIN AND KINGS RIVER CANAL AND IRRIGATION COMPANY.

Case No. 834.

Decided December 18, 1915.

Complainants, purchasing water for irrigation purposes from defendant, allege that defendant discriminates in the distributing of water and defendant at the hearing, agreeing to establish certain rules suggested by the Commission's engineers,

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defendant is directed to provide gauges to measure water going into each section, to establish a rotation system of distribution among complainants and to maintain a wasteway from its main canal to the San Joaquin River.

J. W. Hawkins, of *Hawkins & Hawkins,* for Complainants.

Edward F. Treadwell, for Defendant.

REPORT OF THE COMMISSION.

DEVLIN, *Commissioner.*

The complaint herein was filed July 30, 1915, alleging, in effect, discrimination against complainants in the delivery of water for irrigation purposes.

Complainants, some twenty-six in number, are farmers residing in the vicinity of Crows Landing, Stanislaus County, and are supplied with water for irrigation from the canals of defendant.

The San Joaquin and Kings River Canal and Irrigation Company, defendant, is a public service corporation organized and existing under the laws of the state of Nevada and engaged, among other activities, in the sale and distribution of water to complainants and others.

Water is diverted by defendant from the San Joaquin River near Firebaugh, Fresno County, and is distributed through gravity canals and laterals to irrigators in Fresno, Merced and Stanislaus counties, supplying some 118,000 acres with water.

All the complainants reside at the lower end of the defendant's main canal, north of the Orestimba Creek, in what is called the Orestimba section. The area there irrigated is some 5,000 acres.

Public hearing was held in this proceeding at Crows Landing on November 19, 1915, at which time it was stipulated by all parties in this action that the suggestions contained in the report of the Commission's hydraulic engineers would, if put into effect with some slight alterations, reduce largely the possibility of discrimination. Defendant stipulated that it would follow these recommendations. Complainants agreed that in such case this action would not be pressed.

The agreed provisions follow:

(1) The installation of gauges in the canals to record the quantity of water going into each section and the recording of gauge heights at least once daily.

(2) The establishment of rules and regulations providing for a rotation schedule.

(3) The construction of a spillway from a point near the end of the main canal.

Discussion of the first recommendation disclosed the fact that gauges are in place in the canals, but no record has been kept of the quantity of water passing them during the past year.

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The second item occasioned some discussion as to its advisability in this locality. It was contended by defendant that less than 4 per cent of the area irrigated is represented by complainants and that it would not be right to establish a rotation schedule for the entire system unless a majority of the consumers be given an opportunity to be heard.

The advisability of a rotation schedule of delivery in order to distribute water equitably and efficiently is well established. However, in this proceeding I recommend that this be established only in the locality represented before the Commission, but I suggest to the company that it conform to the methods indicated on its entire system.

We now come to the recommendation that a wasteway be provided near the lower end of the main canal. Efforts are being made by complainants to secure permission to use a lateral ditch which extends from a point near the end of the main canal to the San Joaquin River as a wasteway. If this is secured by complainants the company stipulates that it will clean, enlarge and maintain this ditch and construct a spillway in its main canal or if some other right of way can be obtained the company will construct and maintain a wasteway on it.

I recommend, that upon the owners filing an agreement that the company may use this ditch or some other right of way, the defendant be ordered to construct the above mentioned wasteway.

It was apparent at the hearing that considerable of the friction that exists is due to local administration of the company's affairs which finally resulted in personal ill-feeling between the utility and its consumers, and it was agreed that a change in the local representative would be conducive to harmony and the elimination of much of the existent trouble. Inasmuch as the utility expressed its intention of changing its local representative with a view to removing the troubles which it is agreed between both parties were due to this cause, I think it safe to assume that no further trouble will arise from this source.

I submit herewith the following form of order:

ORDER.

Complaint having been made by George Fink and others against the San Joaquin and Kings River Canal and Irrigation Company alleging discrimination by defendant against complainants, in the delivery of water used for irrigation, and a public hearing having been held and it having been stipulated and agreed by the parties concerned regarding improvements in service, and the Commission being fully apprised in the premises,

It is hereby ordered by the Railroad Commission of the State of California that the San Joaquin and Kings River Canal and Irrigation Company establish gauges in its canals to measure the quantity of water

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going into each section and that these gauges be read at least once daily and the reading recorded.

It is further ordered that the following rule be put into effect and that this rule shall affect only that portion of the system of this company north of Orestimba Creek in Stanislaus County:

> An employee will be designated by the company to whom water users may make requests, before the twentieth of each month, for water to be used in the month following, stating amount, length of run desired and the area to be irrigated. There will then be a nondiscriminatory schedule arranged, conforming as nearly as possible to requests, and posted at Crows Landing post office on or before the twenty-eighth of that month. The schedule will show for each water user the time of beginning and ending of the run and the amount of water to be delivered. Water users may, by specific arrangement made in advance, exchange deliveries.

It is further ordered that the San Joaquin and Kings River Canal and Irrigation Company construct and maintain a wasteway from its main canal to the San Joaquin River contingent upon an agreement being filed with this Commission giving the use of some existing lateral or right of way to the company, and that the San Joaquin and Kings River Canal and Irrigation Company report to this Commission within sixty days from the date of this order the progress made in carrying out this work.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of December, 1915.

DECISION NO. 2984.

IN THE MATTER OF THE APPLICATION OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY AND KENWOOD RURAL TELEPHONE COMPANY, THE FORMER TO CANCEL ITS RATES ON FILE FOR EXCHANGE TELEPHONE SERVICE AT KENWOOD, SONOMA COUNTY, CALIFORNIA, AND TO WITHDRAW FROM BUSINESS AT KENWOOD, THE LATTER TO ENTER INTO THE BUSINESS OF RENDERING EXCHANGE TELEPHONE SERVICE AT KENWOOD, AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING IT SO TO DO.

Application No. 1962.

Decided December 18, 1915.

Pacific Telephone and Telegraph Company operating a telephone exchange in the town of Kenwood, applies for permission to discontinue service at the point named, and the Kenwood Rural Telephone Company applies for permission to

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enter the territory named and operate a telephone exchange. Application granted, schedule of rates established and Kenwood Company directed to keep an account of its revenues and expenses and submit same to the Commission on or before May 1, 1916.

J. W. Gilkyson, for The Pacific Telephone and Telegraph Company.

Milo S. Baker, for Kenwood Rural Telephone Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

As indicated by the title of this application, this is a proceeding involving the cancellation of tariffs now in effect and the withdrawal of The Pacific Telephone and Telegraph Company from the town of Kenwood, Sonoma County, and the entrance by Kenwood Rural Telephone Company for the purpose of providing telephone service and the establishment of rates therefor.

The Pacific Telephone and Telegraph Company now operates a small telephone exchange at this point and has on file with the Railroad Commission a schedule of rates for exchange telephone service applicable to patrons located within a radius of one-half mile from its central office, as follows:

Business Service.

	Wall	Desk
Individual line, unlimited	$2 50	$2 75
Two-party line, unlimited	2 00	2 25
Extension set	1 00	1 00

Residence Service.

	Wall	Desk
Individual line, unlimited	$2 00	$2 25
Two-party line, unlimited	1 75	2 00
Four-party line, unlimited	1 50	1 75
Extensions	1 00	1 00

This schedule provides also for a rate of $3.00 per year for farmer line service for patrons who may be located beyond one-half mile from the central office, and also for mileage rates for patrons located beyond the one-half mile limit desiring individual, two-party or four-party line service. These mileage rates are in addition to the rates shown above and apply for each quarter of a mile or fraction thereof beyond

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the one-half mile limit according to the class of service selected, as follows:

Individual line	50 cents per month
Two-party line	35 cents per month
Four-party line	25 cents per month

In this instance it happens that, while all of the above rates are of record as the lawful rates of The Pacific Telephone and Telegraph Company for this exchange, the only subscribers now having service are farmer line subscribers and hence the only rate actually charged by this company is the $3.00 per year farmer line rate.

The Kenwood Rural Telephone Company is a copartnership consisting of twenty-three members, this copartnership having built and now owning the farmer lines referred to above, each member having contributed his portion of the cost of construction and also paying his portion of the cost of maintenance. In addition to the twenty-three members, there are nine other parties classed by the company as renters for whom the company has provided the necessary lines and telephones and to each of whom it charges a monthly rate of $1.50 for service. For each of the company's members and for each renter, The Pacific Telephone and Telegraph Company charges and collects its farmer line rate of $3.00 per year.

As in most exchanges of this character, the hours of service now in effect at Kenwood are limited and those having telephones desire to have the hours extended, but due to the small amount of revenue involved and the additional amount which it would cost, The Pacific Telephone and Telegraph Company is unwilling to extend the hours of service. The Kenwood Rural Telephone Company, however, states that it can provide the desired service at small cost if allowed to take over the exchange, and The Pacific Telephone and Telegraph Company is willing to withdraw and allow it to do so.

The Kenwood Rural Telephone Company, since it is charging rates to these renters, is in fact operating as a public utility, but its rates have not been filed with the Railroad Commission as required by the Public Utilities Act. It appears also that, while renters are paying $1.50 per month ($18.00 per year) for service, members of the copartnership are paying only $3.00 per year and the proportionate cost of maintenance. To remove this discrimination and to enable it to take over and operate the exchange with an extension of the present hours of service, the Kenwood Rural Telephone Company is now asking the Commission to grant a certificate of public convenience and necessity permitting it to enter into the public utility business of rendering exchange telephone service at this point. At the hearing of this application, it also requested permission to amend its application to the extent of being

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permitted to adopt and uniformly charge and collect the present schedule of rates of The Pacific Telephone and Telegraph Company. The application will accordingly be considered as thus amended.

With reference to rates, it appears from the testimony that certain adjustments of the present service and rates may be necessary to the uniform application of this schedule and to the removal of the discrimination which now exists, but until the company shall have had a reasonable time within which to operate under this schedule the amount of revenue which will result can not be definitely known and, therefore, the reasonableness of the rates in this case can not be determined at this time. This company, however, has expressed itself as being entirely agreeable to adopt such rates, if any, as the Commission may subsequently find to be reasonable.

It appears that the public convenience and necessity will be subserved if the proposed change is made, and I am accordingly of the opinion that the application should be granted; this, however, upon the condition that this schedule be uniformly applied and that after a period of not to exceed four months the Kenwood Rural Telephone Company shall submit such information with reference to all of its subscribers and rates and its investment, revenues and expenses to the Commission as may be necessary to enable it to determine whether these rates should be continued.

The following order is accordingly submitted:

ORDER.

Application having been made to the Railroad Commission by The Pacific Telephone and Telegraph Company, a corporation, and Kenwood Rural Telephone Company, a copartnership, for permission to the former to cancel its present tariffs and to withdraw from furnishing exchange telephone service at Kenwood, Sonoma County, California, and to the latter to enter the same territory as a public utility furnishing exchange telephone service within the said same territory and to publish, file and place in effect a schedule of rates as hereinafter provided; and it appearing to the Commission that the public convenience and necessity will be subserved by the granting of this application, and no reasonable objection appearing,

It is hereby ordered that the application herein be and it is hereby granted, provided that the applicant, Kenwood Rural Telephone Company, shall publish, file with this Commission and put into effect, within thirty days from the effective date of the order herein, the following schedule of rates for exchange telephone service:

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Business Service.

	Wall	Desk
Individual line, unlimited	$2 50	$2 75
Two-party line, unlimited	2 00	2 25
Extension sets	1 00	1 00

Residence Service.

	Wall	Desk
Individual line, unlimited	$2 00	$2 25
Two-party line, unlimited	1 75	2 00
Four-party line, unlimited	1 50	1 75
Extension sets	1 00	1 00

The above rates to apply within a radius of one-half mile from the the central office.

For service located at points beyond one-half mile from the central office the following rates shall apply:

Mileage. For each one-quarter mile or fraction thereof beyond one-half mile from the central office:

Individual line, 50 cents per month.
Two-party line, 35 cents per month.
Four-party line, 25 cents per month.

Farmer Line Service. Minimum of five stations per line, or the equivalent thereof, in annual rentals, $3.00 per year per station.

And provided further that the said applicant, Kenwood Rural Telephone Company, shall keep separate, true and accurate accounts of all of its subscribers and the rates charged and collected by it and of its investment, revenues and operating expenses, and on or before the first day of May, 1916, shall submit to this Commission such information in connection therewith as may enable the Commission to determine whether the rates herein provided for shall be continued.

This order to be and become effective on and after January 1, 1916.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 18th day of December, 1915.

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DECISION No. 2985.

IN THE MATTER OF THE APPLICATION OF THE GREAT WESTERN POWER COMPANY OF CALIFORNIA FOR PERMISSION TO ISSUE CAPITAL STOCK AND DEBENTURES AND FOR APPROVAL OF A CERTAIN FINANCIAL PLAN.

Application No. 1999.

Decided December 20, 1915.

Applicant applies for permission to issue 274,986 shares of its common capital stock of the par value of $100.00 per share and $5,000,000.00 face value of 10-year 6 per cent debentures, in connection with a plan of refinancing, the approval of which plan it also petitions for. In addition to the issuance of the above securities this plan includes: Applicant shall acquire from Western Power Company of New Jersey 274,986 shares of stock of Great Western Power Company in return for a like amount of applicant's stock; applicant to sell to Western Power Company of New Jersey $4,500,000.00 face value of debentures at 91 with an option, for a period of one year, to purchase the remaining $500,000.00 at the same price; applicant to purchase from Great Western Power Company 49,980 shares of stock of the City Electric Company, paying not less than $3,000,000.00 therefor, this money to be deposited with trustees and used for additions and betterments to the property of Great Western Power Company, subject to its first mortgage, against which improvements, no first mortgage bonds shall hereafter be issued. After applicant shall have acquired stock of City Electric Company it shall cause the properties of the latter named company to be transferred to it in consideration of the assumption of the City company's mortgage and other obligations. Applicant further intends to execute a general and refunding mortgage upon all properties which it may hereafter acquire, including first mortgage bonds of City Electric and Great Western Power companies and to issue thereunder not more than $150,000,000.00 face value of bonds. Hereafter applicant intends to acquire all of the properties of Great Western Power Company (subject to the mortgage thereon) in consideration of the assumption by applicant of the mortgage and other obligations of Great Western Power Company.

Detailed review of the history and present financial condition of various companies composing the Great Western Power system made, and though the Commission hesitates in authorizing an issue of stock to be exchanged for stock of Great Western Power Company, not knowing what tangible values such stock represents, as no appraisal of the properties was submitted by applicant or made by the Commission, owing to the contention of applicant that the proposed plan would fail if it were not permitted to issue the stock for purposes as applied for, permission for such issuance is granted provided that each certificate shall have printed upon it a statement to the effect that in authorizing its issuance the Commission did so unaware of the equities which it represents.

Held, Applicant authorized to issue 274,986 shares of capital stock of the par value of $100.00 per share, for purposes as above outlined, and $5,000,000.00 face value of 10-year 6 per cent convertible gold debentures to net not less than 91, proceeds to be used only for purposes as shall hereafter be approved by the

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Commission. Applicant also authorized to issue 7 per cent preferred stock at not less than 95, in such amounts as it may require, to be issued in exchange for debentures as provided for by its debenture agreement.

Guy C. Earl and *Chaffee E. Hall*, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of capital stock and debentures, and the execution of a debenture agreement and for the approval of a general financial plan, as will hereinafter appear in detail.

The petition herein recites that applicant has an authorized capital stock of sixty million dollars, divided into 600,000 shares of the par value of $100.00 each, of which 300,000 shares are preferred stock and 300,000 shares are common stock; that said preferred stock is non-assessable, is preferred as to assets and dividends, bears interest at the rate of 7 per cent per annum (cumulative from date of issue), and is redeemable in whole or in part at the option of the corporation at 105 plus accrued dividends; that applicant's articles of incorporation contain certain restrictions with reference to the issue of preferred stock; that the total stock heretofore issued by applicant consists of 14 shares of common stock, and that applicant was incorporated on November 23, 1915, pursuant to a certain financial plan set forth in the petition, for the purpose of acquiring the properties and securities of a part or all the corporations comprising what is known as the Great Western Power System.

The petition alleges that the corporations comprising the Great Western Power System are: Western Power Company, a New Jersey corporation; Great Western Power Company, City Electric Company and California Electric Generating Company, all California corporations; United Light and Power Company, a New Jersey corporation; and United Light and Power Company, Central Oakland Light and Power Company, Consumers Light and Power Company, Equitable Light and Power Company, Southside Light and Power Company and Consolidated Electric Company, all California corporations. The relationship between these corporations is alleged to be as follows: Western Power Company (of New Jersey) owns the entire capital stock, except directors' shares, of Great Western Power Company; Great Western Power Company owns substantially the entire capital stock of City Electric Company, the common stock, except directors' shares, of California Electric Generating Company, and the entire capital stock, except directors' shares, of Consolidated Electric Company; Consolidated Electric Company owns the controlling stock interest in United Light and Power Company (of New Jersey), United Light and Power Company (of California), Central Oakland Light and Power Company,

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Consumers Light and Power Company, Southside Light and Power Company and Equitable Light and Power Company. Consolidated Electric Company also owns all the physical assets of said corporations next hereinbefore specified, subject to the liens of the respective mortgages or deeds of trust securing the notes and bonds of said corporations.

The petition states that the Great Western Power System is engaged in the business of generating, transmitting, distributing and selling electric energy and steam in the counties of Plumas, Butte, Sutter, Yuba, Sacramento, Solano, Napa, Sonoma, Contra Costa, and Alameda, and in the cities and towns therein, and in the city and county of San Francisco, and elsewhere in the State of California; that the properties comprising the Great Western Power System include a storage reservoir at Big Meadows, Plumas County, with a present capacity of more than 250,000 acre-feet, a hydroelectric generating plant at Big Bend on the north fork of the Feather River in Butte County, with a present installed capacity of 70,000 horsepower, a steel tower transmission line extending from Big Bend to Oakland, two submarine cables beneath the waters of San Francisco Bay, various steam generating plants in the cities of Oakland and San Francisco, and approximately 800 miles of distributing lines in the counties, cities and towns above named; that the operation of the properties in the city and county of San Francisco is conducted by City Electric Company; and that the properties elsewhere in California are operated by Great Western Power Company either by virtue of ownership or under lease from some of the other corporations composing the Great Western Power System.

The petition recites that for the purpose of securing money for developing and extending the Great Western Power System, the following financial plan has been devised:

1. Great Western Power Company of California is to authorize the issue of debentures, under a debenture agreement, in the aggregate amount of five million dollars, to be dated November 1, 1915, and payable November 1, 1925, to bear interest at the rate of 6 per cent per annum, to be convertible at par and accrued interest after two years and until five years from date into preferred stock at 95 and accrued dividends, and to be redeemable at 101 and accrued interest at any time on four weeks' published notice.

2. Great Western Power Company of California is to acquire from Western Power Company (of New Jersey) 274,986 shares of the capital stock of Great Western Power Company, of the par value of $27,498,600.00, being the entire capital stock of Great Western Power Company, except the qualifying shares of directors, and to issue in payment therefor 274,986 shares of the common capital stock of Great Western Power Company of California.

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3. Great Western Power Company of California is to sell to Western Power Company (of New Jersey) $4,500,000.00, face value, of its said debentures at the price of 91 per cent of the face amount thereof and accrued interest, to be delivered as and when required by Western Power Company (of New Jersey) during the twelve succeeding months, and Great Western Power Company of California is also to give an option to Western Power Company (of New Jersey) on the remaining $500,000.00 face value of said debentures at the same price, for a period of one year.

4. Great Western Power Company of California, as soon as practicable, is to purchase from Great Western Power Company $4,998,000.00, par value, of the stock of City Electric Company (being the entire stock of City Electric Company, except 20 shares) for not less than three million dollars in cash, which purchase price when received by Great Western Power Company is to be lodged with the trustee of Great Western Power Company's first mortgage and to be withdrawn from time to time thereafter only to pay for improvements on and additions to the properties of Great Western Power Company, as provided in its said first mortgage, against which expenditures no first mortgage bonds of Great Western Power Company shall hereafter be issued.

5. Great Western Power Company of California, after it has acquired the capital stock of City Electric Company, if and when practicable, is to cause substantially the entire property of City Electric Company to be conveyed (subject to the mortgage thereon) to Great Western Power Company of California, in consideration of the assumption by Great Western Power Company of California of the mortgage and other obligations of City Electric Company.

6. Great Western Power Company of California will thereafter authorize a general and refunding mortgage, to be secured by a direct lien on substantially the entire property of City Electric Company (subject to the first mortgage thereon) and on all other properties and franchises of Great Western Power Company of California then owned or thereafter acquired, and by the deposit of certain first mortgage bonds of City Electric Company and Great Western Power Company acquired or to be acquired by Great Western Power Company of California as part of the treasury assets of said corporations. The aggregate amount of the bonds to be issued under said general and refunding mortgage is to be either unlimited or limited to not more than $150,000,000.00 as Great Western Power Company of California may hereafter determine. The petition sets forth tentative suggestions with reference to the term, interest, sinking fund provisions, and redemption provisions of said bonds, the relationship between the face value of the

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bonds to be issued and capital expenditures, and the purposes for which said bonds are to be issued.

7. Great Western Power Company of California, after having authorized its said mortgage and issued as many bonds thereunder as practicable in exchange for first mortgage bonds of City Electric Company, if and when practicable (legally and otherwise) is to cause substantially all the property of Great Western Power Company to be conveyed (subject to the mortgage thereon) to Great Western Power Company of California in consideration of the assumption by Great Western Power Company of California of the mortgage and other obligations of Great Western Power Company.

The petition refers to an agreement dated November 3, 1915, between Western Power Company (of New Jersey), party of the first part, and E. H. Rollins & Sons and William P. Bonbright & Company, Incorporated, referred to as the purchasers, parties of the second part, under which agreement Western Power Company (of New Jersey) has agreed to sell and the purchasers have agreed to buy the $4,500,000.00, face value, of debentures of Great Western Power Company of California, to be acquired by Western Power Company (of New Jersey), except such amount of debentures as may be purchased by the stockholders of Western Power Company (of New Jersey) and Western Power Corporation (of New York) at 96 per cent of their face value. The purchasers are to pay 96 per cent of the face value of the debentures and Western Power Company (of New Jersey) agrees to pay to the underwriting purchasers a commission of 5 per cent on the face value of the entire $4,500,000.00, face value, of debentures, in addition to giving to the purchasers the option of purchasing the remaining $500,000.00, face value, of debentures within two months at 91 per cent of their face value plus accrued interest, and also the sum of $8,000.00 for services rendered. The agreement also contains provisions for the sale by the purchasers to Western Power Company (of New Jersey) of certain bonds of City Electric Company and the sale by Western Power Company (of New Jersey) to the purchasers of certain shares of the preferred stock of California Electric Generating Company, and provides for the retirement by Western Power Company (of New Jersey), from time to time, of its one million dollars of two-year 6 per cent gold notes, due March 1, 1917.

The petition states that the proceeds to be derived by Great Western Power Company of California from the sale of the five million dollars, face value, of debentures or any part thereof, will be used by Great Western Power Company of California "for the purposes, or some of the purposes, specified by subdivision *b* of section 52 of the Public Utilities Act, and included in the aforesaid financial plan."

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The petition asks that this Commission make its order authorizing Great Western Power Company of California to issue its said common capital stock of the par value of $27,498,600.00 and its said debentures of the face value of $5,000,000.00, and to approve the remainder of the aforesaid financial plan.

Copies of Great Western Power System's condensed income account, the proposed debenture agreement and the purchase agreement are filed with the petition.

A public hearing on this petition was held in San Francisco on December 11, 1915, at which time the application was submitted.

Great Western Power Company of California, the applicant herein, as already indicated, has issued only 14 shares of its common capital stock. The company does not as yet own any property.

Great Western Power Company was incorporated on September 18, 1906, and is an operating company which, either directly or through a controlling ownership of the capital stock of its subsidiary corporations, owns all the physical properties of the Great Western Power System. Great Western Power Company has an authorized issue of 275,000 shares of common capital stock of the par value of $100.00 per share, being a total par value of $27,500,000.00. All these shares with the exception of 13 shares held by 13 directors, are owned by Western Power Company (of New Jersey). City Electric Company, one of the subsidiaries of Great Western Power Company, has an authorized issue of 50,000 shares of common capital stock of the par value of $100.00 per share, being a total par value of $5,000,000.00. With the exception of 9 shares, held by 9 directors and 20 shares held in one block by another stockholder, the entire capital stock of City Electric Company is held by Walter S. Wilson in trust for Great Western Power Company. As heretofore stated, City Electric Company is the operating company in San Francisco. California Electric Generating Company, another subsidiary of Great Western Power Company, has an authorized issue of 50,000 shares of common capital stock of the par value of $100.00 per share, being a total par value of $5,000,000.00, and 25,000 shares of preferred capital stock of the par value of $100.00 per share, being a total par value of $2,500,000.00 of preferred stock. Thirteen shares of the common capital stock are held by 13 directors. The entire remaining common capital stock is held by Great Western Power Company. The preferred capital stock is held by the public but the largest holding is that of Western Power Company (of New Jersey), which owns 7,000 shares. California Electric Generating Company is the owner of the steam properties in Oakland which are operated by Great Western Power Company under lease dated January 26, 1909. Consolidated Electric Company, another subsidiary of Great Western Power Company, has authorized and issued common capital stock of the face value

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of $10,000.00, all of which, except directors' shares, is held by Great Western Power Company. Consolidated Electric Company, under authority from this Commission, heretofore acquired the properties of United Light and Power Company (of New Jersey), United Light and Power Company (of California), Consumers Light and Power Company, Equitable Light and Power Company, Central Oakland Light and Power Company and Southside Light and Power Company. The first of these corporations was a holding company. The other corporations owned and operated electric properties in San Francisco and Oakland.

We turn now to the holding companies. As hereinbefore indicated, the entire capital stock of Great Western Power Company, with the exception of directors' shares, is held by Western Power Company (of New Jersey). The New Jersey corporation owns no property except the capital stock of Great Western Power Company and certain securities of some of the subsidiary corporations of Great Western Power Company. The New Jersey corporation has an authorized issue of $14,670,000.00, par value, of common capital stock and $6,000,000.00, par value, of preferred stock, which, until the exchange for the capital stock of Western Power Corporation (of New York) next hereinafter referred to, was held by the public in the United States and Europe. In other words, the New Jersey corporation issued its capital stock to the public, based solely upon its ownership of the capital stock of Great Western Power Company and of certain securities of some of the subsidiary corporations of Great Western Power Company.

On June 5, 1915, Western Power Corporation was incorporated under the laws of New York, with a preferred capital stock of the par value of $7,080,000.00, and 146,700 shares of common capital stock without par value. The common capital stock was authorized in accordance with the recent statutory enactment in the state of New York, providing that capital stock may be issued without any designation as to par value. The testimony in this proceeding shows that the New York corporation is now issuing its capital stock, share for share, to the owners of the capital stock of the New Jersey corporation, with the exception that the par value of the preferred capital stock of the New York corporation, being $7,080,000.00, is the equivalent of the sum of the preferred capital stock of the New Jersey corporation, amounting to $6,000,000.00 and the accrued dividends on the preferred stock of the New Jersey corporation, accumulating from January 1, 1912, to December 31, 1914, amounting to $1,080,000.00, but not paid by the New Jersey corporation. Applicant's president testified herein that the New York corporation was incorporated for the reason that the New Jersey laws contain certain restrictions with reference to the issue of debentures, and other matters, which have proven onerous to the New Jersey corporation. It is the intention hereafter to disincorporate the

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New Jersey corporation and to pass its property to the New York corporation.

The following table shows in summary form the capital stock of these various corporations, authorized and outstanding:

TABLE No. I.

Great Western Power System Stock Authorized and Outstanding.

Name of company	Shares authorized		Shares outstanding	
	Common	Preferred	Common	Preferred
Western Power Corporation (of New York)	146,700	70,800	Not	known
Western Power Company (of New Jersey)	146,700	60,000	146,700	60,000
Great Western Power Company of California	300,000	300,000	14	
Great Western Power Company	275,000		275,000	
City Electric Company	50,000		50,000	
California Electric Generating Company	50,000	25,000	50,000	25,000
Consolidated Electric Company	100		100	

All shares in the foregoing table are of the par value of $100.00, with the exception of the 146,700 shares of common capital stock of Western Power Corporation (of New York), which shares are without par value.

Western Power Corporation (of New York) has no bonded indebtedness.

Western Power Company (of New Jersey) likewise has no bonded indebtedness. On March 1, 1915, the corporation issued one million dollars, face value, of two-year collateral trust gold notes for the purpose of paying, with the assistance of other available funds, $1,250,000.00, face value of notes, which matured on July 18, 1915.

Great Western Power Company has provided for a bond issue in the amount of twenty-five million dollars. On October 31, 1915, the status of these bonds was reported to be as follows:

Outstanding and interest bearing	$21,704,000
Pledged with Central Trust Company of New York to guarantee payment of dividends on preferred stock of California Electric Generating Company	707,000
Pledged with other parties	330,000
In company's treasury	584,000
Unauthenticated	1,675,000
Total	$25,000,000

These bonds are known as "first mortgage 5 per cent sinking fund 40-year gold bonds," are payable on July 1, 1946, and may be redeemed on July 1, 1912, or on any subsequent interest date at 106 per cent of their face value and accrued interest.

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City Electric Company has provided for an issue of bonds in the total sum of five million dollars, of which amount the company reports that $2,731,000.00, face value, were outstanding on October 31, 1913. These bonds are known as "first mortgage 5 per cent 30-year sinking fund gold bonds," mature on July 1, 1937, and are redeemable on and after July 1, 1912, at not more than 105.

California Electric Generating Company has authorized an issue of bonds of the face value of $5,000,000.00, of which $1,500,000.00, face value, are referred to as "Series A" bonds and $3,500,000.00, face value, as "Series B" bonds. On October 31, 1915, $1,113,000.00, face value, of Series A bonds were reported as outstanding. None of the Series B bonds have been issued. These bonds bear interest at the rate of 5 per cent per annum and are payable on September 1, 1948.

Consolidated Electric Company has authorized an issue of bonds of the total face value of $3,000,000.00. On October 31, 1915, $2,075,000.00, face value, of these bonds had been issued. On the same day there were outstanding $143,000.00, face value, of underlying bonds of Central Oakland Light and Power Company and $100,000.00, face value, of underlying bonds of Consumers Light and Power Company.

The following table shows the interest bearing funded indebtedness of the various corporations of Great Western Power System on October 31, 1915:

TABLE No. II.

Great Western Power System Interest Bearing Funded Indebtedness on October 31, 1915.

Western Power Company 6 per cent notes	$1,000,000
Great Western Power Company 5 per cent bonds	21,704,000
City Electric Company 5 per cent bonds	2,731,000
California Electric Generating Company 5 per cent bonds	1,113,000
Consolidated Electric Company 5 per cent bonds	2,075,000
Central Oakland Light and Power Company 5 per cent bonds	143,000
Consumers Light and Power Company 6 per cent bonds	100,000
Total	$28,866,000

The following table shows the current indebtedness of the various corporations representing the Great Western Power System on October 31, 1915:

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TABLE No. III.

Great Western Power System. Current Indebtedness on October 31, 1915.

Item	Great Western Power Company	City Electric Company	California Electric Generating Company	Total
Notes payable	$297,500 00	$6,000 00		$303,500 00
Accounts payable—				
Due system corporations	316,532 89	3,550 07		320,082 96
Audited vouchers	94,811 34	24,218 01		119,029 35
Wages unpaid	38,989 17	7,516 17		46,505 34
Consumers' deposit	226 00	183 35		409 35
Miscellaneous	6,028 61	45 00	2,965 15	9,038 76
Total notes and accounts payable	$754,088 01	$41,512 60	$2,965 15	$798,565 76
Interest accrued	384,855 22	46,534 67	12,725 00	444,114 89
Taxes accrued	8,172 93	445 25	283 75	8,901 93
Grand total	$1,147,116 16	$88,492 52	$15,973 90	$1,251,582 58

In addition to the foregoing, Consolidated Electric Company, the stock of which has recently been acquired by Great Western Power Company, owed $450.00 as accounts payable and $52,627.06 accrued interest.

The following table shows the assets and liabilities of Great Western Power Company, City Electric Company, California Electric Generating Company and Consolidated Electric Company on October 31, 1915, as set forth in the books of these corporations:

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TABLE No. IV.

Great Western Power System.

Assets and liabilities (as reported in the books) on October 31, 1915.

	Consolidated Electric Company	Great Western Power Company	California Electric Generating Company	City Electric Company	Combined
Assets.					
Fixed capital installed prior to January 1, 1913		$41,848,615 62	$8,637,885 50	$7,991,441 01	$58,477,942 13
Fixed capital installed since December 31, 1912	$2,235 907 00	1,841,725 63	5,101 73	792,005 54	4,874,739 90
Cash and deposits—					
Cash	20,959 04	228,512 31	578 79	110,763 47	360,813 61
Special deposits	10,200 00	13,817 50	3,450 00	28,344 81	55,812 31
Notes receivable	17,496 77	60,517 33		26 05	78,040 15
Accounts receivable—					
System corporations	54,362 14	219,000 00	113,357 23	408,212 73	794,932 10
Consumers and agents		217,699 40		104,827 87	322,527 27
Miscellaneous	4 50	197,934 56		3,373 64	201,312 70
Interest and dividends receivable		12,311 12	9,300 14	5,084 46	26,695 72
Other current assets—					
Investments—					
Securities of other corporations		6,507,112 50		7,500 00	6,514,612 50
Advances to system corporations, miscellaneous		977,346 71			977,346 71
Materials and supplies		104,625 01			104,625 01
Fuel oil		2,204 30		6,770 40	8,974 70
Salvaged equipment		21,162 07			21,162 07
Loaned equipment		15,621 19			15,621 19
Sinking funds			148 20	337 65	485 85
Treasury securities	50,500 00	914,000 00			964,500 00
Prepaid expenses—					
Rents		2,634 30		3,150 36	5,784 66
Taxes	5,369 16	14,631 30	255 50	9,587 97	29,843 93
Insurance		2,277 28		2,010 51	4,287 79
Other		11,106 41			11,106 41
Unamortized discount on securities and expenses		257,683 91		171,607 42	429,291 33
Other suspense		1,409 99			1,409 99
E. Hawley, trustee		707,000 00			707,000 00

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Construction work in progress—					
Work orders		39,028 31		24,204 41	63,232 72
Big Meadows reservoir		26,231 86			26,231 86
Big Meadows dam		48,419 77			48,419 77
Big Bend Unit No. 6		116,436 00			116,436 00
Total assets	$2,394,798 61	$54,409,064 38	$8,770,077 09	$9,669,248 30	$75,243,188 38
Liabilities.					
Capital stock—					
Common	$10,000 00	$27,500,000 00	$5,000,000 00	$5,000,000 00	$37,510,000 00
Preferred			2,500,000 00		2,500,000 00
Funded debt	2,318,000 00	23,325,000 00	1,113,000 00	2,731,000 00	29,487,000 00
Advances from system corporations					
Notes payable		297,500 00		6,000 00	303,500 00
Accounts payable—					
System corporations		316,532 89		3,550 07	320,082 96
Audited vouchers		94,811 34		24,218 01	119,029 35
Wages unpaid		38,989 17		7,516 17	46,505 34
Consumers' deposits		226 00		183 35	409 35
Miscellaneous	4 50	6,028 61	2,965 15	45 00	9,043 26
Interest accrued	52,627 06	384,855 22	12,725 00	46,534 67	496,741 95
Taxes accrued		8,172 93	283 75	445 25	8,901 93
Dividends declared					
Service billed in advance	5,369 16		255 50		5,624 66
Reserve for accrued depreciation				305,279 33	305,279 33
Casualty and insurance reserves		15,447 19		74,985 71	90,432 90
Great Western Power Company first mortgage 5 per cent bonds due Great Western Power Company		707,000 00			707,000 00
Income invested since December 31, 1912, in fixed capital		31,320 00			31,320 00
Reserves invested in sinking funds			84,000 00	78,790 00	162,790 00
Other reserves from income or surplus		78,239 91	35,833 33	11,053 12	125,126 36
Total liabilities	$2,386,000 72	$52,804,123 26	$8,749,062 73	$8,289,600 68	$72,228,787 39

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TABLE No. IV—Continued.

Great Western Power System.

Assets and liabilities (as reported in the books) on October 31, 1915.

	Consolidated Electric Company	Great Western Power Company	California Electric Generating Company	City Electric Company	Combined
Corporate surplus unappropriated as of December 31st	----------	$1,168,578 57	$18,267 19	$1,290,617 39	$2,477,463 15
Net income for year to date	----------	$527,438 63	$151,080 50	$111,541 21	$790,060 34
Dividends on outstanding stock	----------	----------	$125,000 00	----------	$125,000 00
Sinking fund appropriations	----------	$74,886 67	23,333 33	$24,163 33	122,383 33
Miscellaneous deductions from surplus	----------	31,893 42	----------	3,165 33	35,058 75
Total deductions	----------	$106,780 09	$148,333 33	$27,328 66	$282,442 08
Total net income after deductions	----------	$420,658 54	$2,747 17	$84,212 55	$507,618 26
Miscellaneous additions to surplus	$8,797 89	15,704 01	----------	4,817 68	29,319 68
Net surplus for year to date	$8,797 89	$436,362 55	$2,747 17	$89,030 23	$536,937 84
Total surplus to date	$8,797 89	$1,604,941 12	$21,014 36	$1,379,647 62	$3,014,400 99
Total liabilities and surplus	$2,394,798 61	$54,409,064 38	$8,770,077 09	$9,669,248 30	$75,243,188 38

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The following table shows the earnings and expenses of Great Western Power Company, City Electric Company and California Electric Generating Company for the calendar years ending December 31, 1912, 1913 and 1914, and for the ten months ending October 31, 1915:

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TABLE No. V.

Great Western Power Company, City Electric Company and California Electric Generating Company.

Earnings and expenses for 1912.

Item	Great Western Power Company	City Electric Company	California Electric Generating Company	Total
Operating revenues	$1,435,029 34	$974,571 61		$2,409,600 95
Operating expenses	777,737 21	573,040 67		1,350,777 88
Net operating revenue	$657,292 13	$401,530 94		$1,058,823 07
Non-operating revenues—				
Rent accrued from lease of electric plant			$238,000 00	$238,000 00
Miscellaneous rent revenues	$649 00			$649 00
Interest revenues on funded debt owned				
Miscellaneous interest revenues	12,868 37	$6,092 89	3,145 38	22,106 64
Miscellaneous non-operating revenues				
Total non-operating revenue	$13,517 37	$6,092 89	$241,145 38	$260,755 64
Gross corporate income	$670,809 50	$407,623 83	$241,145 38	$1,319,578 71
Deductions from gross corporate income—				
Bond interest	$710,195 70	$86,583 07	$60,000 00	$856,778 77
Other interest	4,004 15	3,219 82		7,223 97
Sinking funds chargeable to income		12,870 00	28,000 00	40,870 00
Rent expenses				
Rent for lease of other electric plant				
Rent for conduits, poles, etc.				
Amortization of debt discount and expense				
Miscellaneous rent deductions				
Uncollectible bills				
Total deductions	$714,199 85	$102,672 89	$88,000 00	$904,872 74
Net income	*$43,390 35*	$304,950 94	$153,145 38	$414,705 97

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Surplus beginning of year	$74,539 48	$611,716 88	$4,586 69	$690,843 05
Additions—				
Profit from income account	*43,390 35	304,950 94	153,145 38	414,705 97
Miscellaneous additions	*515,031 08	7,885 82		522,916 40
Gross surplus	$546,180 21	$924,553 14	$157,732 07	$1,628,465 42
Deductions—				
Dividends paid			$150,000 00	$150,000 00
Sinking fund appropriations				
Realized depreciation not covered				
Appropriations to reserve	$2,250 00	$63,660 80		65,910 80
Miscellaneous deductions				
Total deductions	$2,250 00	$63,660 80	$150,000 00	$215,910 80
Surplus at end of year	$543,930 21	$860,892 34	$7,732 07	$1,412,554 62

*Includes $149,500 guarantee account of California Electric Generating Company; also $357,088.64 interest during construction for years 1909, 1910, 1911.

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TABLE No. V—Continued.

Great Western Power Company, City Electric Company and California Electric Generating Company.

Earnings and expenses for 1913.

Item	Great Western Power Company	City Electric Company	California Electric Generating Company	Total
Operating revenues	$1,845,702 58	$1,018,981 27		$2,864,683 85
Operating expenses	534,090 17	596,555 59	$1,793 40	1,132,439 16
Net operating revenue	$1,311,612 41	$422,425 68	*$1,793 40*	$1,732,244 69
Non-operating revenues—				
Rent accrued from lease of electric plant			$238,319 78	$238,319 78
Miscellaneous rent revenues	$6,849 10	$68 33		6,917 43
Interest revenues on funded debt owned	697 92			697 92
Miscellaneous interest revenues	245,341 54	48,935 22	3,494 55	297,771 31
Miscellaneous non-operating revenues	6,067 50			6,067 50
Total non-operating revenue	$258,956 06	$49,003 55	$241,814 33	$549,773 94
Gross corporate income	$1,570,568 47	$471,429 23	$240,020 93	$2,282,018 63
Deductions from gross corporate income—				
Bond interest	$999,678 34	$99,218 05	$58,526 38	$1,157,422 77
Other interest	49,575 33	36,795 83		86,371 16
Sinking funds chargeable to income				
Rent expenses	10,912 50			10,912 50
Rent for lease of other electric plant	238,319 78	2,400 00		240,719 78
Rent for conduits, poles, etc.	919 18			919 18
Amortization of debt discount and expense				
Miscellaneous rent deductions	585 00	812 40		1,397 40
Uncollectible bills	4,218 89	2,493 78		6,712 67
Total deductions	$1,304,209 02	$141,720 06	$58,526 38	$1,504,455 46
Net income	$266,359 45	$329,709 17	$181,494 55	$777,563 17

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Surplus beginning of year	$543,930 21	$860,892 34	$7,732 07	$1,412,554 62
Additions—				
Profit from income account	266,359 45	329,709 17	181,494 55	777,563 17
Miscellaneous additions	32,085 26	10,248 82	3,741 25	46,075 33
Gross surplus	$842,374 92	$1,200,850 33	$192,967 87	$2,236,193 12
Deductions—				
Dividends paid			$150,000 00	$150,000 00
Sinking fund appropriations		$25,585 00	28,000 00	53,585 00
Realized depreciation not covered	$13,750 47			13,750 47
Appropriations to reserve	390 68	441,848 40		442,239 08
Miscellaneous deductions	1,639 50	8,886 31	4,407 44	14,933 25
Total deductions	$15,780 65	$476,319 71	$182,407 44	$674,507 80
Surplus at end of year	$826,594 27	$724,530 62	$10,560 43	$1,561,685 32

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TABLE No. V—Continued.

Great Western Power Company, City Electric Company and California Electric Generating Company.

Earnings and expenses for 1914.

Item	Great Western Power Company	City Electric Company	California Electric Generating Company	Total
Operating revenues	$1,989,936 30	$1,074,080 50		$3,064,016 80
Operating expenses	457,794 77	796,842 24	$2,044 43	1,256,681 44
Net operating revenue	$1,532,141 53	$277,238 26	*$2,044 43*	$1,807,335 36
Non-operating revenues—				
Rent accrued from lease of electric plant			$237,094 44	$237,094 44
Miscellaneous rent revenues	$9,915 00	$57 30		9,972 30
Interest revenues on funded debt owned	173 50			173 50
Miscellaneous interest revenues	266,082 03	53,014 85	3,299 32	322,396 20
Miscellaneous non-operating revenues				
Total non-operating revenue	$276,170 53	$53,072 15	$240,393 76	$569,636 44
Gross corporate income	$1,808,312 06	$330,310 41	$238,349 33	$2,376,971 80
Deductions from gross corporate income—				
Bond interest	$1,048,810 89	$100,214 16	$57,050 01	$1,206,075 06
Other interest	57,888 18	36,000 00		93,888 18
Sinking funds chargeable to income				
Rent expenses	11,422 85			11,422 85
Rent for lease of other electric plant	237,094 44	2,400 00		239,494 44
Rent for conduits, poles, etc.	1,075 60			1,075 60
Amortization of debt discount and expense	3,531 80	2,086 71		5,618 51
Miscellaneous rent deductions	919 92	641 66		1,561 58
Uncollectible bills	6,084 05	2,649 46		8,733 51
Total deductions	$1,366,827 73	$143,991 99	$57,050 01	$1,567,869 73
Net income	$441,484 33	$186,318 42	$181,299 32	$809,102 07

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Surplus beginning of year	$826,594 27	$724,530 62	$10,560 43	$1,561,685 32
Additions—				
Profit from income account	441,484 33	186,318 42	181,299 32	809,102 07
Miscellaneous additions	745 38	6,488 04		7,233 42
Gross surplus	$1,268,823 98	$917,337 08	$191,859 75	$2,378,020 81
Deductions—				
Dividends paid			$150,000 00	$150,000 00
Sinking fund appropriations		$25,275 00	28,000 00	53,275 00
Realized depreciation not covered	$20,823 23	312 98		21,136 21
Appropriations to reserve	20,489 32	*441,848 40*		*421,359 08*
Miscellaneous deductions	58,932 86	42,980 11	*4,407 44*	97,505 53
Total deductions	$100,245 41	*$373,280 31*	$173,592 56	*$99,442 34*
Surplus at end of year	$1,168,578 57	$1,290,617 39	$18,267 19	$2,477,463 15

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TABLE No. V—Continued.

Great Western Power Company, City Electric Company and California Electric Generating Company.

Earnings and expenses for ten months ending October 31, 1915.

Item	Great Western Power Company	City Electric Company	California Electric Generating Company	Total
Operating revenues	$1,445,783 40	$955,811 36		$2,401,594 76
Operating expenses	426,050 78	310,146 81	$1,618 76	737,816 35
Net operating revenue	$1,019,732 62	$645,664 55	*$1,618 76*	$1,663,778 41
Non-operating revenues—				
Rent accrued from lease of electric plant				
Miscellaneous rent revenues				
Interest revenues on funded debt owned			$199,307 59	$199,307 59
Miscellaneous interest revenues				
Miscellaneous non-operating revenues				
Total non-operating revenue				
Gross corporate income	*$2,283 15*	$24,805 03	$199,307 59	$221,829 47
Deductions from gross corporate income—	$1,017,449 47	$670,469 58	$197,688 83	$1,885,607 88
Bond interest	$904,333 33	$105,586 81	$46,608 33	$1,056,528 47
Other interest	38,661 14	357 93		39,019 07
Sinking funds chargeable to income				
Rent expenses				
Rent for lease of other electric plant				
Rent for conduits, poles, etc.				
Amortization of debt discount and expense				
Miscellaneous rent deductions				
Uncollectible bills				
Total deductions	$942,994 47	$105,944 74	$46,608 33	$1,095,547 54
Net income	$74,455 00	$564,524 84	$151,080 50	$790,060 34

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Surplus beginning of year				
Additions—				
Profit from income account				
Miscellaneous additions				
Gross surplus				
Deductions—				
Dividends paid				
Sinking fund appropriations				
Realized depreciation not covered				
Appropriations to reserve				
Miscellaneous deductions				
Total deductions				
Surplus at end of year				

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After this general review of the financial condition of the corporations comprising the Great Western Power System, we shall address ourselves to the specific requests which are now being made for this Commission's authorization.

Great Western Power Company of California asks for an order authorizing the issue of 274,986 shares of its common capital stock having a total par value of $27,498,600.00, which stock is to be issued to Western Power Company (of New Jersey) in exchange for an equivalent number of shares of common stock of Great Western Power Company now held by the New Jersey corporation and constituting the entire authorized and issued capital stock of Great Western Power Company, with the exception of the shares held by the directors. The net result of this transaction would be that the New Jersey corporation would substitute 274,986 shares of the capital stock of Great Western Power Company of California, the applicant herein, for the 274,986 shares of the capital stock of Great Western Power Company now held by the New Jersey corporation, and that the said shares of common stock of Great Western Power Company would be transferred from the treasury of the New Jersey corporation to the treasury of Great Western Power Company of California, the new California corporation, applicant herein, in exchange for the issue by the latter corporation, under the authority of this Commission, of 274,986 shares of its common capital stock. Of the $27,500,000.00, par value, of the capital stock of Great Western Power Company now outstanding, $25,000,000.00, par value, was issued at the time Great Western Power Company was incorporated in 1906 and $2,500,000.00 was issued at the time Great Western Power Company secured control of City Electric Company in 1911. The properties originally acquired by Great Western Power Company consisted of the properties theretofore held by Western Power Company (of California), Golden State Power Company (of California) and Eureka Power Company (of California), together with certain properties and options held by the so-called Syndicate Managers who were instrumental in the incorporation of Great Western Power Company.

These properties were acquired by Great Western Power Company in part by deed from Western Power Company (of California) dated October 20, 1906, a copy of which is filed herein as Exhibit "F," and in part by deed from Western Power Company (of New Jersey), a form of which deed is embodied in Exhibit "E" herein.

The deed from Western Power Company (of California) conveyed to Great Western Power Company real property, easements, water rights and other rights constituting the major portion of the properties acquired by Great Western Power Company at or about the time of its incorporation. For these properties, Great Western Power Company paid $1,000,000.00 face value of its first mortgage bonds and $500,000.00 par

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value of the preferred stock of Western Power Company (of New Jersey) which stock was issued by the New Jersey corporation as part of this general transaction.

The deed from Western Power Company (of New Jersey) conveyed to Great Western Power Company the New Jersey corporation's rights in the following property:

(1) Five certain options to acquire real property, on which options $8,100.00 had been paid.

(2) All reports and data with reference to the Feather River Water Power Project.

(3) Agreement dated December 18, 1905, between the syndicate managers of the Feather River Water Power Project, Western Power Company (of California), Edwin T. Earl and Guy C. Earl.

(4) Agreement dated June 19, 1906, between the syndicate managers and Viele, Cooper & Blackwell.

(5) Agreement dated August 24, 1906, between the syndicate managers and Frank L. Brown and Brown & Wilson.

(6) All other property theretofore acquired by the New Jersey corporation from the syndicate managers.

The New Jersey corporation also agreed to convey or cause to be conveyed to Great Western Power Company all the property of Eureka Power Company and Golden State Power Company; to procure for Great Western Power Company purchasers for $6,967,000.00, face value, of its bonds at 90 per cent of their face value; to issue to Great Western Power Company $500,000.00, par value, of the New Jersey corporation's preferred stock; and to use its best efforts to secure for Great Western Power Company a favorable right of way contract with Western Pacific Railway Company.

Great Western Power Company, in return for these considerations, performed the following acts:

(1) Issued to the New Jersey corporation its capital stock of the par value of $24,999,000.00 "as fully paid."

(2) Agreed to carry out all the agreements of the syndicate managers and the New Jersey corporation under the contracts of the syndicate managers hereinbefore referred to.

(3) Executed a demand promissory note to the New Jersey corporation for $287,191.10.

(4) Agreed to pay promissory note of the syndicate managers to Guaranty Trust Company for $131,722.75, dated August 13, 1906.

(5) Agreed to pay two promissory notes of the syndicate managers to Dr. R. V. Pierce, each dated December 30, 1905, and each in the amount of $194,557.75.

(6) Agreed to pay all moneys paid by the New Jersey corporation in connection with the general project subsequent to August 24, 1906.

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(7) Agreed to pay all indebtedness of the syndicate managers for legal services and disbursements.

(8) Agreed to authorize an issue of $25,000,000.00 of bonds and to issue $6,967,000.00 face value thereof to the New Jersey corporation at 90 per cent of their face value.

This indenture contains other provisions which it is not at this time necessary to set out.

At the time these transactions were consummated, it was necessary for a California corporation desiring to authorize the issue of bonds to authorize the issue of at least an equivalent amount in par value of capital stock. Hence it was necessary for Great Western Power Company desiring to authorize an issue of $25,000,000.00 of bonds also to authorize the issue of $25,000,000.00, par value, of capital stock. The plan of the syndicate managers, while providing for the issue of $25,000,000.00, par value, of capital stock by Great Western Power Company also provided that "$8,300,000.00 of the bonds of the California company or their proceeds are to be used for the payment of all commissions, legal and other expenses, disbursements, obligations, liabilities and advances of whatever character made or incurred, or hereafter made or incurred by the said syndicate managers of the Feather River Water Power Project, or made or incurred on account of said project prior to the formation of said Feather River Water Power Syndicate." It would appear, accordingly, that the capital stock to be issued by Great Western Power Company was a subordinate consideration.

Mr. Mortimer Fleishhacker, in reply to a question whether the $25,000,000.00 of capital stock of Great Western Power Company was not all issued as a bonus, testified that he did not know how much cash investment this capital stock represented but that he had been informed that it represented considerable expenditures for preliminary investigation and development work.

No inventory and appraisal of the properties acquired by Great Western Power Company were made at the time of acquisition or at any time subsequent thereto. While the officers of Great Western Power Company are of the opinion that the property has a value considerably in excess of the outstanding bonded indebtedness, the Commission has been unable to ascertain to what extent, if at all, the capital stock of Great Western Power Company, at the time of its issue represented tangible value. There is no evidence as to the value of the consideration received by Great Western Power Company when the corporation issued $2,500,000.00, par value, of its capital stock in connection with the acquisition of the capital stock of City Electric Company. In each instance, this stock was issued prior to the enactment of the Public Utilities Act, at a time when, as hereinbefore stated, it was

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necessary for a corporation to authorize capital stock at least up to the face value of its authorized bonded indebtedness, and when bonds and stock could be issued without securing the consent of any regulatory public authority.

Great Western Power Company of California, the applicant herein, earnestly insists that unless it be permitted to issue to the New Jersey corporation the entire amount of common capital stock hereinbefore referred to, it will be unable to carry forward its financial plan. The situation is complicated by the fact that the New Jersey corporation has issued to the public $20,670,000.00, par value, of capital stock based almost entirely on the stock of Great Western Power Company held in its treasury. The applicant represents that except in some emergency the capital stock which it desires to issue will be retained in the treasury of the New Jersey corporation or of the New York corporation.

The Commission desires to be of all possible assistance to Great Western Power Company of California in its financing, but at the same time naturally hesitates to give unconditional authority, as long as par value remains on California stock, for the issue of capital stock, unless it is convinced that the capital stock represents value in accordance with the principles heretofore established in this Commission's decisions.

Great Western Power Company of California has expressed a willingness to issue certificates of stock in such form that the Commission's consent to the issue thereof may not be misconstrued. The order herein will accordingly provide that each certificate of the common capital stock issued by Great Western Power Company of California under the order herein or in transfers thereof shall contain, in the body of the certificate, the following language:

> "This certificate of stock has been issued pursuant to Decision No. 2985, rendered on December 20, 1915, by the Railroad Commission of the State of California, in Application No. 1999. In said decision the Railroad Commission states that the issue of this stock is authorized only because of the practical necessity of exchanging the same for a like amount of stock of Great Western Power Company, issued before the law of California required the Railroad Commission's consent to the issue of capital stock by public utilities. The Railroad Commission of the State of California in said decision states that it has been unable to ascertain to what extent, if at all, the capital stock of Great Western Power Company, at the time of its issue, represented tangible value."

Great Western Power Company of California will be expected to adopt by resolution of its board of directors a form of common stock certificate containing the foregoing language, which form of certificate shall hereafter be used for the issue and transfers of its common capital stock issued under the order herein.

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It should be distinctly understood that the Railroad Commission's action in authorizing the issue of the common capital stock as herein requested, must not be taken as a precedent. Authorization is being made solely because the capital stock of Great Western Power Company was issued prior to the effective date of the Public Utilities Act and is now outstanding, and because applicant herein earnestly insists that the exchange of an equivalent amount of its common capital stock for the stock of Great Western Power Company now held by the New Jersey corporation, is a condition precedent to the success of further satisfactory financing by Great Western Power System.

Great Western Power Company of California also desires to issue $5,000,000.00, face value, of 10-year 6 per cent convertible gold debentures at the price of 91 per cent of the face value thereof, together with accrued interest, as hereinbefore set forth. These debentures are to be sold to the New Jersey corporation, which has entered into an agreement with E. H. Rollins & Sons and William P. Bonbright & Company, Incorporated, by which the purchasers underwrite the debentures at 96 per cent of their face value. Mr. Mortimer Fleishhacker, president of Great Western Power Company of California, testified that although these debentures had been offered by the New Jersey corporation to its stockholders, including the New York corporation, the subscriptions from these sources at 96 were negligible, so that the bankers will be called upon to take over practically the entire issue. At any time on or after November 1, 1917, and before November 1, 1920, the debenture holders may convert them into 7 per cent preferred stock of Great Western Power Company of California, issued at 95. When the debentures are thus converted into preferred stock, the cost of this money to Great Western Power Company of California will be 8.09 per cent. It is to be presumed that when the Great Western Power System enters upon its permanent financing, it will be able to secure money at a lesser rate of interest. Great Western Power Company of California has submitted copy of a proposed debenture agreement, dated November 1, 1915, with The Equitable Trust Company of New York, which agreement is satisfactory in form.

The petition herein alleges that the proceeds from the sale of said debentures are to be used "for the purposes, or some of the purposes, specified by subdivision (*b*) of section 52 of the Public Utilities Act, and included in the aforesaid financial plan." Subsequent to the hearing, Great Western Power Company of California filed a statement marked "Exhibit D," specifying the purposes to which the money to be derived

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from the sale of the debentures will be applied. These purposes are as follows:

Transmission line, Big Bend to Oakland	$1,500,000
Sixth Unit at Big Bend (12,500 K.W.)	500,000
Seventh Unit and building at Big Bend (12,500 K.W.)	600,000
Third Bay cable	150,000
Fourth Bay cable	100,000
Three motor generator sets, Oakland	150,000
San Francisco Substation (Bush street)	142,000
Improvements to United Light and Power System, San Francisco	225,000
Distribution lines in San Francisco	550,000
Distribution lines in Oakland	500,000
Distribution lines in Sacramento city	40,000
Extensions and distribution lines in outside districts	500,000
Substation, Contra Costa County	140,000
Substation, Sacramento	30,000
Total	$5,127,000

It appears that the foregoing sums are to be expended in additions, betterments and extensions of properties now owned by Great Western Power Company, City Electric Company, Consolidated Electric Company, and possibly also California Electric Generating Company. As the proceeds from the sale of the debentures herein authorized will go into the treasury of the applicant herein, Great Western Power Company of California, it is obvious that the purposes for which the Commission can authorize the use of these moneys must be in connection with expenditures by Great Western Power Company of California.

When applicant's attention was drawn to this point, applicant filed an amended statement of the purposes to which the moneys to be derived from the sale of the debentures will be applied. This statement is as follows:

$4,998,000 par value City Electric stock	$3,000,000
Transmission line, Big Bend to Oakland	1,500,000
Third Bay cable	150,000
Fourth Bay cable	100,000
Total	$4,750,000

This Commission is not informed as to the value of the capital stock of City Electric Company, for which stock, under this amended statement, Great Western Power Company of California is to pay three million dollars. We are not informed whether the transmission line from Big Bend to Oakland and the 3d and 4th Bay cables are to be installed by and become the property of Great Western Power Company of California or whether it is intended that these properties shall be constructed by and remain the property of some one or more of the other corporations of the Great Western Power System.

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While the Commission is in entire sympathy with the use of the proceeds from the sale of the debentures for the purpose of making additions, extensions and betterments to the properties of Great Western Power System in California, the purposes for which said proceeds are to be used have not as yet been stated in such form as to enable the Commission at this time to specify such purposes in its order. When Great Western Power Company of California has filed a satisfactory statement of the purposes for which the proceeds are to be used, the Commission will make a supplemental order specifying such purposes. In the mean time, the proceeds from the sale of the debentures shall be held by Great Western Power Company of California, in its treasury, or deposited in a bank or banks, subject to the supplemental order from this Commission specifying the purposes for which the moneys may be expended.

Great Western Power Company of California also asks this Commission for a general authorization approving the remaining portions of its financial plan. With reference to some of these features, no evidence was presented at the hearing. With reference to other features, applicant itself is as yet unable to specify the details. While the Commission, obviously, can not commit itself to the details of a plan which is as yet presented only in general terms, it is only fair to applicant to say that its general plan of consolidating the properties of Great Western Power System and of thereafter securing the necessary funds for additions and betterments, in part through the execution of a general mortgage on the entire consolidated properties and the issue of bonds thereunder, meets with the hearty approval of this Commission. When the Commission's consent is hereafter asked in the usual formal applications, to enable the constituent public utility corporations of the Great Western Power System to carry out the details of this general plan, the Commission will give careful consideration to the petitions as presented.

It is clear that the general financial plan presented by applicant involves the issue of large amounts of bonds by Great Western Power Company of California, both for the purpose of refunding existing bonds of constituent corporations of the Great Western Power System, as well as for additions and betterments. The constituent corporations of the Great Western Power System have not as yet presented to this Commission an inventory and appraisal of their properties. The Commission does not know the value of their properties or the relationship between such value and the securities now outstanding. In order that the Commission may be in a position to act intelligently when the formal applications for transfers of property and issues of bonds contemplated by applicant's general financial plan are filed, we suggest that these corporations promptly undertake the preparation of an inventory

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and appraisal of the properties of the Great Western Power System, so that the same may be presented to the Commission in completed form a reasonable time in advance of the filing of such formal applications.

ORDER.

Great Western Power Company of California having applied to the Railroad Commission for an order authorizing the issue of capital stock and of debentures, the execution of a debenture agreement and the approval of a general financial plan, and a public hearing having been held upon said application, and the Railroad Commission finding that said application should be granted to the extent to which this order hereafter specifies,

It is hereby ordered as follows:

1. Great Western Power Company of California is hereby authorized to issue 274,986 shares of its common capital stock of the par value of $100.00 per share, to Western Power Company (of New Jersey) in exchange for 274,986 shares, of the par value of $100.00 per share, of the capital stock of Great Western Power Company, now held by Western Power Company (of New Jersey), provided that Great Western Power Company of California shall first have secured from the Railroad Commission a supplemental order specifying that said company has adopted a form of certificate for such common capital stock as directed in the opinion herein.

2. Great Western Power Company of California is hereby authorized to issue its ten-year 6 per cent convertible gold debentures of the total face value of $5,000,000.00, to be dated November 1, 1915, and payable November 1, 1925, and to execute a debenture agreement with The Equitable Trust Company of New York in substantially the form of the draft of debenture agreement which is dated November 1, 1915, and marked "Exhibit B," attached to the petition herein, on the following conditions and not otherwise, to wit:

(*a*) Great Western Power Company of California shall issue said debentures so as to net not less than 91 per cent of the face value thereof, plus accrued interest.

(*b*) Great Western Power Company of California shall use the proceeds from the issue of said debentures only for such purpose or purposes as shall hereafter be specified by the Railroad Commission in a supplemental order, after Great Western Power Company of California shall have presented to the Railroad Commission a satisfactory statement, in accordance with the provisions of section 52 of the Public Utilities Act, of the purpose or purposes for which said company intends to use said proceeds.

(*c*) Great Western Power Company of California shall keep separate, true and accurate accounts showing the receipt and application in

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detail of the proceeds of the sale of the debentures hereby authorized to be issued, and on or before the twenty-fifth day of each month, the company shall make a verified report to the Railroad Commission, stating the sale or sales of said debentures during the previous month, the terms and conditions of sale, the moneys realized therefrom and the disposition of such moneys, all in accordance with the provisions of this Commission's General Order No. 24, which, in so far as applicable, is made a part of this order.

(*d*) No debentures shall be issued hereunder until Great Western Power Company of California has paid the fee specified in section 57 of the Public Utilities Act.

(*e*) The authority hereby given to issue debentures shall apply only to debentures issued by Great Western Power Company of California on or before January 1, 1917.

3. Great Western Power Company of California is hereby authorized to issue its 7 per cent preferred capital stock at not less than 95 per cent of its par value, at any time on or before November 1, 1920, in exchange for debentures herein authorized, and in accordance with the provisions of article IV of said debenture agreement, provided that Great Western Power Company of California shall report to the Railroad Commission the issue of said preferred stock, the proceeds derived therefrom and the disposition of said proceeds as provided in section 2 of this order with reference to the debentures.

4. The Railroad Commission approves of the general plan of consolidating the properties of the Great Western Power System and of thereafter executing a general mortgage and issuing bonds thereunder for proper purposes and in proper amounts as may hereafter be authorized by the Railroad Commission, but can not commit itself, in advance of the presentation of the usual formal application or applications, to the details of such general plan.

Dated at San Francisco, California, this 20th day of December, 1915.

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DECISION NO. 2986.

IN THE MATTER OF THE APPLICATION OF THE CITY OF ESCONDIDO FOR AN APPRAISEMENT OF THE ASSETS OF THE ESCONDIDO UTILITIES COMPANY.

Application No. 1890.

Decided December 20, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Applicant having made written request that the above entitled proceeding be dismissed,

It is hereby ordered by the Railroad Commission of the State of California that the above entitled application be and the same is hereby dismissed, without prejudice.

Dated at San Francisco, California, this 20th day of December, 1915.

DECISION NO. 2987.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN LIGHT AND POWER CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 2001.

Decided December 20, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

San Joaquin Light and Power Corporation having, at the hearing, made a formal request to the Railroad Commission that the above entitled application be dismissed, on the ground that applicant has secured sufficient funds to pay off at maturity all of the notes which applicant was asking permission to renew,

It is hereby ordered by the Railroad Commission of the State of California that this application be and the same is hereby dismissed, without prejudice.

Dated at San Francisco, California, this 20th day of December, 1915.

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DECISION NO. 2988.

IN THE MATTER OF THE APPLICATION OF MIDLAND COUNTIES PUBLIC SERVICE CORPORATION FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN NOTES.

Application No. 2002.

Decided December 20, 1915.

Applicant applies for and is granted permission to issue six promissory notes of an aggregate face value of $13,766.05 in renewal of a like number of notes of an equal face value issued to cover expenses incurred for additions and betterments to plant.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of six promissory notes for the purpose of renewing an equal number of notes now due, or soon to become due. The notes are specified in the order herein.

A public hearing was held in Los Angeles on December 16, 1915. The evidence shows that the said six outstanding notes, or the proceeds thereof, were used by applicant for the acquisition of property and for the construction, extension and improvement of its facilities.

ORDER.

Midland Counties Public Service Corporation, having applied for an order authorizing the issue of six promissory notes in renewal of the notes hereinafter set forth, and a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which said outstanding notes, or the proceeds thereof, were used were not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted.

It is hereby ordered by the Railroad Commission of the State of California that Midland Counties Public Service Corporation be and the same hereby is authorized to issue its promissory notes for such terms as applicant may deem advisable, not exceeding one year from the date of this order, at rates of interest and in amounts not to exceed those now in effect as to each of said notes, respectively, and payable to the same payees as at present, in renewal of the following notes:

Payee	Amount	Interest rate, per cent	Maturity
Westinghouse Electric and Manufacturing Company	$3,104 97	6	Dec. 4, 1915
J. A. Roebling's Sons Company	953 01	7	Dec. 22, 1915
Western Electric Company	1,608 07	6	Dec. 30, 1915
First National Bank, Santa Maria	1,500 00	7	Jan. 2, 1916
First National Bank, Paso Robles	2,500 00	8	Jan. 26, 1916
Union National Bank, San Luis Obispo	4,000 00	7	Feb. 14, 1916

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The authority herein granted is granted upon the following conditions, and not otherwise:

1. Midland Counties Public Service Corporation shall issue said notes so as to net not less than the face value thereof.

2. Midland Counties Public Service Corporation is hereby authorized, during the period of one year from the date of this order, to issue other notes in renewal of those herein authorized on the same terms and conditions, provided that the combined terms of the notes herein authorized and those issued in renewal thereof, respectively, shall not exceed one year from the date of this order.

3. Within thirty days after the notes herein authorized to be issued shall have been issued, applicant shall report such fact to this Commission together with a statement of the face value of the notes issued, the date, maturity, rate of interest, and the payee of each note, respectively.

Dated at San Francisco, California, this 20th day of December, 1915.

DECISION NO. 2989.

IN THE MATTER OF THE APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF CERTAIN PROMISSORY NOTES.

Application No. 1995.

Decided December 20, 1915.

Applicant applies for and is granted permission to issue two promissory notes of an aggregate face value of $8,000.00 with interest at 6 per cent, such notes to be in renewal of notes of a like face value issued to cover expenses incurred for additions and betterments to its plant.

A. E. Peat, for Applicant.

REPORT OF THE COMMISSION.

This is an application for an order authorizing the issue of two promissory notes for the purpose of renewing the two notes specified in the order herein.

A public hearing was held in Los Angeles on December 16, 1915. The evidence shows that the said two outstanding notes were used by applicant for the acquisition of property and for the construction, extension and improvement of its facilities and service.

ORDER.

Southern California Gas Company having applied for an order authorizing the issue of two promissory notes in renewal of the notes

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hereinafter set forth, and a public hearing having been held on said application and this Commission finding that the purposes for which said outstanding notes were used were not in whole or in part reasonably chargeable to operating expenses or to income, and that the application should be granted,

It is hereby ordered by the Railroad Commission of the State of California that Southern California Gas Company be and the same is hereby authorized to issue its promissory notes for such terms as applicant may deem advisable, not exceeding one year from the date of this order at rates of interest and in amounts not to exceed those now in effect as to each of said notes respectively, and payable to the same payees as at present, in renewal of the following notes:

Payee	Amount	Interest rate, per cent	Maturity
Sprague Meter Company	$3,000	6	Dec. 15, 1915
C. and G. Cooper Company	5,000	6	Feb. 24, 1916

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Southern California Gas Company is hereby authorized to issue said notes so as to net not less than the face value thereof.

2. Southern California Gas Company is hereby authorized, during the period of one year from the date of this order, to issue further notes in renewal of those herein authorized, on the same terms and conditions, provided that the combined terms of the notes hereby authorized and those issued in renewal thereof, shall not exceed one year from the date of this order.

3. Within thirty days after the notes herein authorized to be issued shall have been issued, applicant shall report such fact to this Commission, together with a statement of the face value of the notes issued, the date, maturity, rate of interest and the payee of each note, respectively.

4. This order shall not become effective until Southern California Gas Company has paid the fee specified in section 57 of the Public Utilities Act, as amended.

Dated at San Francisco, California, this 20th day of December, 1915.

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DECISION NO. 2990.

CITY OF LOS BANOS

vs.

WEST SAN JOAQUIN VALLEY WATER COMPANY.

Case No. 822.

IN THE MATTER OF THE APPLICATION OF WEST SAN JOAQUIN VALLEY WATER COMPANY FOR AN ORDER AUTHORIZING AN INCREASE IN WATER RATES.

Application No. 1854.

Decided December 22, 1915.

Complaint of the City of Los Banos alleges unsatisfactory service on the part of defendant company, particularly inadequate pressure, impure water and refusal to extend service. Defendant water company files an application petitioning for an increase in rates, contending that its present schedule is unremunerative.

Held, That the present rates do not provide an adequate return upon the value of defendant's system, including the improvements herein directed to be installed. The following schedule of rates established: Flat rate of $1.85 per month with a monthly charge of $1.25 per fire hydrant with a monthly minimum of $40.00; meter rate of $1.50 per month minimum entitling consumer to 500 cubic feet; 20 cents per 100 cubic feet between 500 and 1,500; 15 cents per 100 cubic feet in excess of 1,500 per month; and 15 cents per 100 cubic feet for metered municipal water. Defendant directed to extend service to tract known as Wilson Re-subdivision and to meter 100 consumers now on a flat rate. Rates herein established to become effective only upon condition that defendant install a filter system and the improvements outlined above.

Stephen P. Galvin, for City of Los Banos.

Edward F. Treadwell, for West San Joaquin Valley Water Company.

REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

The City of Los Banos, incorporated, filed a complaint with this Commission on June 28, 1915, amended on July 19, 1915, alleging that West San Joaquin Valley Water Company, the utility serving domestic water to the inhabitants of said city, was rendering unsatisfactory service, and specific complaint was made as follows:

(*a*) Insufficient water pressure for fire protection.

(*b*) Unwholesomeness of water supply.

(*c*) Refusal of the company to extend its mains into a new tract called the Wilson Re-subdivision.

The company, in its answer to the complaint, denied most of the allegations but admitted its refusal to extend mains into the Wilson

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Re-subdivision. Concurrently, with this answer, the company filed its application for an increase in rates, alleging the necessity of a 50 per cent increase in order to insure a reasonable return on the plant already installed and 6 per cent additional increase in case filters were installed and extensions made into the Wilson Re-subdivision.

By stipulation between the parties at the date of the hearing in Los Banos, November 30, 1915, the case and the application for an increase in rates were consolidated.

The city of Los Banos has a population of about 1,500 persons and is one of the thriving towns in the San Joaquin Valley, and in July, 1914, the city voted itself within the jurisdiction of the Commission. Of late there has been considerable activity in building, street work, etc., and the inhabitants of the city have awakened to the necessity for adequate fire protection and a protected supply of domestic water.

The West San Joaquin Valley Water Company was organized in 1912 to take over from Miller & Lux, Incorporated, the water system in Los Banos. The first construction of the water system occurred about twelve or fifteen years ago. Water is taken from an open ditch passing through the town and, after a rough sedimentation process, is pumped to the storage tank serving the city. The ditch from which the water is taken is a branch of a lateral of the San Joaquin and King's River Canal and Irrigation Company—water being diverted into this canal some forty miles above Los Banos, flowing through fields and pastures on its way north. This water is admittedly soft water as compared with the hard water obtained at the auxiliary well near the pumping plant. In the fall of the year when the river water is low, the canal diversions are not sufficient to reach Los Banos and at such times the applicant's well is operated as an auxiliary supply. The city of Los Banos uses about 300,000 gallons per day. The West San Joaquin Valley Water Company pays a wholesale rate for this water, of 1 cent per one thousand gallons, amounting to $85.00 per month the past year.

The city of Los Banos filed with this Commission, as Exhibit "A," a report of the State Board of Health upon the sanitary conditions of the water supply from the canal, showing that there is more or less pollution and that a filter should be installed. It is the policy of the Railroad Commission to co-operate with the health board wherever possible and in this case it appears that we can be of material assistance in providing means for carrying out the recommendation of the State Board of Health.

While one witness, whose testimony is entitled to more than ordinary consideration because of his being a physician and a former health officer for Los Banos, testified that Los Banos enjoyed a remarkably low death rate per annum, and while the company would not admit the

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unwholesomeness of the water supply, judging from the report of the State Board of Health above referred to, I am not convinced that the water is safe for domestic consumption. The power, however, to order improvements in the conditions affecting the supply, lies without this Commission's jurisdiction and I can only recommend that certain rates be allowed, predicated upon improvements which will be satisfactory to the State Board of Health, and to this Commission.

There are two types of filters which can be installed at Los Banos, the slow sand type filter, as presented by Mr. A. P. Noyes, engineer for the company, being more expensive than the rapid mechanical type filter which Mr. Clark, one of the Commission's hydraulic engineers, considered satisfactory. It is not the intention of this Commission to dictate the type of filter, but we do expect that a filter efficient and satisfactory will be installed.

Complaint was made by several consumers at the hearing that the pressure was so poor that two faucets could not be run simultaneously on different floors of a house. I am inclined to consider these consumers' troubles due to choked service pipes. The constant precipitation of fine matter carried in suspension by the water admittedly has caused the effective area of the pipes to diminish, in some cases, to a condition of uselessness. This is an unfortunate condition which, however, will be improved by proper filtration of the water.

The pressure available at the plant is approximately thirty-five pounds. Complainants have asked that seventy-five pounds be available at all times for fire protection purposes. Such a pressure of seventy-five pounds would require a tower about 175 feet high, or about 115 feet higher than the present tank. The expense of such a tower would be prohibitive. At present there is no effective way of notifying the pump man when a fire occurs. By chance, only, he may hear the fire bell. Such a condition, it appears to me, should be remedied by the city trustees, under the advice of their fire department, an unpaid organization, but one showing considerable activity of late. Telephone connections from the fire tower to the pump house and also to the home of the pump man should be installed by the city.

It was admitted that the company did all in its power to provide the maximum pressure direct from pumps whenever notice was given and that one hundred twenty-five pounds could be furnished to the mains at the plant, but this pressure naturally diminishes with the distance from the plant under draft from the mains.

The situation in regard to the Wilson Re-subdivision has been before this Commission since February, 1915, under informal complaint numbered 5508. Certain residents at that time in the subdivision complained because the company would not extend its mains into the district.

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There are thirty-one lots in the subdivision, and at present about ten houses receiving water by various methods. It was testified by the engineer for the company, Mr. A. P. Noyes, that the cost of the extension would approximate $1,700.00. Such an investment would provide four fire hydrants off four-inch mains, besides furnishing facilities for adequate domestic supply in the tract. A statement was filed by the city tending to show that six houses were under contemplation. The sketch map filed showed that the proposed extension of mains will leave two dead ends and I desire to suggest to the company that at least two-inch pipe be laid along Sixth street to connect the ends of the proposed four-inch lines on the county road and on M street, thus making a circulating system of the extension. The evidence is sufficient to warrant my recommendation that the pipe lines be extended into the Wilson Re-subdivision and recognition of the expense involved will be given in the rates.

The necessity for metering the wasteful users of water was apparent from the testimony showing the financial conditions of the company. It was recommended by the Commission's engineer that one hundred new meters be installed at an approximate total cost of $1,100.00. This installation is especially to be recommended if the water is to receive treatment through a filter. At the present time only 25 per cent of the two hundred eighty-three services are metered.

The company presented a valuation of its property, made by Mr. A. P. Noyes, and the engineer for the Commission also presented a valuation with estimates of depreciation, etc. The following comparisons show that the results of each engineer are fairly comparable:

Item	Company engineer	Commission engineer
Reasonable cost new	$36,514 54	$35,219 00
Straight line depreciation allowance	1,113 17	1,139 00
Sinking fund depreciation allowance	Not computed	651 01
Operating revenues	*5,990 06	†6,882 80
Operating expenses—1914	4,701 86	4,701 86

*Based on 1914 collections.
†Based on sales for a twelve month typical year.

The installation of a filter, new meters and the extension into the Wilson Re-subdivision will require additional capital and I will add to the sum of $35,219.00 as follows:

Reasonable cost, new, present system	$35,219
Allowance for filter	4,000
One hundred new meters	1,100
Extension into Wilson Re-subdivision	1,700
	$42,019

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The allowance for depreciation has been computed, amounting to $651.01 for the present system. I find that approximately $215.00 will be the additional annuity necessary on account of the relatively short life of the property which I will recommend advisable to be installed.

The maintenance and operation expense for the year 1914 was presented in detail by the Commission's engineer. It was shown that but $50.00 per month was charged to office expense, which is very reasonable. The records available for the year 1915 show expenses comparable with the year 1914, with the exception of services renewed in advance of paving—an expense in 1915 which has been extraordinary, and in part chargeable to the depreciation account.

The installation of a filter will require additional expense for chemicals and other supplies but the labor for operation will not materially increase. To the expense of $4,701.86, incurred in 1914, should be added about $200.00, estimated upon the incomplete data available.

The necessary return, based upon the foregoing determinations, is:

7 per cent interest on $42,019	$2,941 33
Allowance for depreciation	866 01
M. & O. expense	4,901 86
	$8,709 20

The rates heretofore charged by applicant have been fixed by the city of Los Banos under a flat rate schedule. The average flat rate for a family is $1.50 and various other rates for specified use are fixed. Where a meter is installed, the minimum has been $1.25, with water charged at 30 cents per 1,000 gallons. Some of the meters read in gallons, but the usual unit is the cubic foot of 7.5 gallons. Rates for irrigation at 25 cents per lot have been a source of loss to the company.

The records of metered use were analyzed by the Commission's engineer and it was found that 4,000 gallons per month was the average use of a family. I shall recommend that 500 cubic feet, equivalent to 3,750 gallons, be fixed as the quantity which shall be allowed for the minimum charge. Under the additional metering, which I will recommend, it is fair to presume that the use of water will be curtailed and pumping expenses diminished.

Using the typical year's income, as testified by our engineer as approximately $6,880.00, it has been clearly shown that an increase in rates is justified and if the improvements proposed herein work out as advantageously as it is expected, the increased rates charged the inhabitants of Los Banos, as developed at the hearing, will not meet with objection. It must be kept in mind that the rates herein recommended embrace certain additions to the system, including meters, and that it is difficult to determine the effect on the revenues resulting from this

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metering. If it is found, after a fair trial of the rates, that there has been an injustice done either of the parties, this Commission will gladly give its attention again to these matters.

I shall recommend the following schedule of rates:

Flat rates.

$1.85 per month for tenements occupied by a single family, or private boarding house, including toilet and bath.

$1.25 per month for each fire hydrant, with a monthly minimum of $40.00.

Meter rates.

$1.50 per month, minimum, for 500 cubic feet or less.

$0.20 per 100 cubic feet for water used over 500 cubic feet, and less than 1,500 cubic feet per month.

$0.15 per 100 cubic feet for all excess used over 1,500 cubic feet per month.

$0.15 per 100 cubic feet for metered municipal water.

The flat rate schedule heretofore existing covers about twenty-seven different classes of use, but all flat rates exceeding the ordinary domestic rate should be placed under metered regulation.

I will recommend that the flat rates heretofore existing, except as charged herein, be continued to such a time as the company can reasonably meter the services. The rate charged the city for fire hydrant service appears reasonable and no change will be recommended.

I submit herewith the following form of order:

ORDER.

City of Los Banos, a municipality, having made complaint against West San Joaquin Valley Water Company, and West San Joaquin Valley Water Company having applied for a raise in water rates in Los Banos, and a hearing having been held at which both proceedings were, by stipulation, consolidated, and being fully apprised in the circumstances,

It is hereby ordered that West San Joaquin Valley Water Company extend its mains into the Wilson Re-subdivision so as to furnish adequate service to that district; and

It is hereby further ordered that West San Joaquin Valley Water Company proceed immediately to meter 100 of the services heretofore paying under flat rate; and

It is hereby further ordered that West San Joaquin Valley Water Company be authorized to collect the following schedule of rates in the territory served by the Los Banos plant:

Flat rates.

$1.85 per month for tenements occupied by a single family, or private boarding house, including toilet and bath.

$1.25 per month for each fire hydrant, with a monthly minimum of $40.00.

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Meter rates.

$1.50 per month minimum for 500 cubic feet (3,750 gallons), or less.

$0.20 per 100 cubic feet for water used over 500 cubic feet, and less than 1,500 cubic feet per month.

$0.15 per 100 cubic feet for all water used in excess of 1,500 cubic feet per month.

$0.15 per 100 cubic feet for metered municipal water.

And

It is hereby further ordered that the schedule of flat rates heretofore existing in Los Banos, excepting those rates herein changed, shall continue in operation until superseded by the metered service provided for in this order; and

It is hereby further ordered that the foregoing rates, which are based upon the assumption that the company will install a filter, meter the system and extend service into the Wilson Re-subdivision, shall not go into effect until this Commission is advised that the improvements herein recommended have been constructed; whereupon a supplemental order will be issued establishing the schedule as above outlined; and

It is hereby further ordered that all matters of complaint not provided for in this order are herewith dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22d day of December, 1915.

DECISION No. 2991.

IN THE MATTER OF THE APPLICATION OF CORCORAN MILL AND WAREHOUSE FOR AN ORDER AUTHORIZING THE ISSUE OF STOCK.

Application No. 1979.

Decided December 21, 1915.

Applicant, recently organized to take over and operate a warehouse business, applies for permission to issue $20,000.00 par value of stock and to enter into a certain agreement for the purchase of warehouse property. This agreement provides for the payment of $10,000.00 for such property, $2,500.00 in cash and the balance, totaling $7,500.00, in three equal annual installments. The balance of the proceeds from the stock applicant proposes to issue is to be used in other than public utility business.

Held, That it is advisable when a company organizes to carry on a business, part of which is of a public utility and part of a private nature, that the business of a private nature be separated from the utility business, as the Commission has always hesitated in authorizing an issue of securities by a public utility, proceeds of which are to be used for other than public utility purposes. Appli-

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cant authorized to issue $10,000.00 par value of stock to be sold at not less than par, the proceeds thereof to be used for the purchase of warehouse properties. Applicant also authorized to enter into an agreement to purchase the properties mentioned.

J. M. Mannon, Jr., of *McCutchen, Olney & Willard*, for Applicant.

REPORT OF THE COMMISSION.

Under this application, as amended by a supplemental application filed by leave of the Commission, Corcoran Mill and Warehouse, a corporation, hereinafter referred to as the "warehouse company," asks for an order authorizing the issue of $20,000.00 par value of its capital stock and the execution by the warehouse company of a contract for the purchase of a certain warehouse and fixtures and machinery used in connection therewith, in Corcoran, Kings County, for $10,000.00.

The warehouse company has just been organized, with a capital stock of $25,000.00, divided into 250 shares of the par value of $100.00 each, of which three shares have been issued for the purpose of incorporation.

The company was formed for the purpose of taking over and conducting the business formerly carried on under the name of "Corcoran Mill and Warehouse" by Mr. F. A. Cleveland, which was sold by him to A. G. Chatom on the 28th of last August under a certain agreement set forth in Exhibit "A," attached to the application herein. By the terms of said agreement said Cleveland sold to Chatom a galvanized iron warehouse building 50 by 196 feet, together with a platform on the east of 24 by 196 feet and a platform on the west of 8 by 196 feet, and certain machinery, fixtures, appurtenances and equipment connected therewith or installed in or on the premises, together with certain contracts and leases, the benefits of which were transferred to, and the burdens assumed by, the purchaser.

The purchase price for said property was $10,000.00, payable as follows: $2,500.00 in cash and Mr. Chatom's agreement to pay the balance in three equal annual installments. To assure the vendor the payment of this balance, in accordance with the terms of said agreement, Mr. Chatom further gave him three of his promissory notes of $2,500.00 each, payable in one, two, and three years, respectively, bearing interest at the rate of 8 per cent per annum and secured by South San Joaquin Irrigation District bonds, of a total face value of $15,000.00.

Mr. Chatom now proposes to assign to the warehouse company all the rights he has acquired under said agreement of sale from F. A. Cleveland in consideration of the said warehouse company paying said Chatom the sum of $2,500.00, as reimbursement for the money actually advanced by him, and the further consideration of the warehouse

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company assuming all the obligations of said Chatom under said agreement. The warehouse company desires to use $2,500.00 of the proceeds from the sale of its stock in making this payment to Chatom, and to use the remaining $17,500.00 as working capital in the various lines of private activities heretofore operated by said Cleveland, including the purchase and sale of hay, grain and other commodities, both as a principal and as a broker. In other words, the warehouse company has asked this Commission to authorize it to issue and sell $20,000.00 par value of its capital stock and to use one-eighth of the proceeds thereof on account of the purchase price of the above mentioned warehouse property, and the other seven-eighths in its nonpublic utility businesses. It is true that the warehouse company would ultimately expect to withdraw $7,500.00 of this amount from its outside enterprises and use it for the payment of the balance due upon the balance of said purchase price, but at the outset it wishes permission to use all but $2,500.00 in private enterprises.

The warehouse is built upon land of The Atchison, Topeka and Santa Fe Railway Company and is served by a spur track belonging to the railway company. The land was originally leased to Cleveland for the term of one year, which lease has been annually renewed for a number of years. According to the evidence, this is the only sort of a lease that The Atchison, Topeka and Santa Fe Railway Company will give upon any of its property in this vicinity and applicant seems to feel assured that the railway company will continue to renew this lease indefinitely.

According to Mr. Chatom's testimony, the physical property that was purchased from Mr. Cleveland is worth at least $10,000.00, irrespective of any alleged intangible values, such as the alleged value of good will, contracts and leases. As Mr. Chatom has agreed to buy the entire issue of $20,000.00 of the capital stock at par and as he is willing to turn over to the warehouse company his contract with Cleveland at cost, we feel that we should assist the warehouse company as far as we can properly do so; and accordingly we shall authorize the warehouse company to execute the proposed contract with A. G. Chatom, assuming both his rights and his liabilities under his contract with Cleveland, and we shall further authorize the issue and sale by the warehouse company of $2,500.00 par value of its capital stock at the present time and sufficient additional stock from time to time to make the necessary payments thereunder. Said proposed contract between the warehouse company and Chatom constitutes, by its terms, an evidence of indebtedness maturing more than one year after its date; otherwise its execution would not have to be authorized by this Commission.

As to authorizing the issue and sale of $17,500.00 of stock for the purpose of supplying the warehouse company with a revolving fund with which to conduct a private business, however, we can not grant

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that portion of applicant's petition. This Commission has consistently encouraged and recommended corporations doing mixed businesses to separate their public utility from their nonpublic utility businesses. There are cases in which it may not be feasible for old established companies which may be conducting both classes of business to separate the two, although the inconveniences and disadvantages of such a combination are so great that a number of such companies have already effected such separations. When a new company is being formed, however, we should be very slow indeed to authorize it to enter upon a course which experience has shown to be far from satisfactory both to the companies and to this Commission; for obviously the logical time to make such separation is at the outset.

This point was raised at the hearing but counsel for applicant strongly urged that his client was asking for no more than had been granted by this Commission under the decisions in connection with the application of Southern Pacific Milling Company, reported in Vol. 5, Opinions and Orders of the Railroad Commission of California, p. 630, and the application of Farmers' Warehouse Company, reported in Vol. 3, Opinions and Orders of the Railroad Commission of California, page 661. An examination of these decisions, however, shows that they are both clearly distinguishable from the present application; for in each of those cases the applicant was an old, established company, and in the case of the Farmers' Warehouse Company it was actually endeavoring to separate, as far as practicable, its private business, from its public utility business.

ORDER.

Corcoran Mill and Warehouse, a corporation, having applied to this Commission for an order authorizing the issue of $20,000.00 par value of its capital stock at par, the proceeds of which applicant desires to use as follows:

> Two thousand five hundred dollars as the initial payment upon the purchase price of the warehouse building and other property set forth in the foregoing opinion; and
>
> Seventeen thousand five hundred dollars as the working capital for various other lines of business, including the purchase and sale of hay, grain and other commodities both as a principal and as a broker.

And said Corcoran Mill and Warehouse having further applied for an order authorizing the execution of a certain agreement of purchase of the warehouse and other property described in the foregoing opinion; and a public hearing having been held on said application, and the Railroad Commission finding that the purposes for which the proceeds of the capital stock hereinafter authorized to be issued are to be used

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are not in whole or in part reasonably chargeable to operating expenses or to income, and that the application, subject to the modifications hereinafter set forth, should be granted in part,

It is hereby ordered that Corcoran Mill and Warehouse, a corporation, be and the same is hereby authorized to issue 100 shares of its capital stock of the total par value of $10,000.00; and

It is further ordered that Corcoran Mill and Warehouse be and the same is hereby authorized to execute a certain agreement with A. G. Chatom, substantially in the form and substance (with the exception of the dates) of the proposed agreement, marked Exhibit "C" and annexed to the warehouse company's supplemental application.

The authority herein granted is granted upon the following conditions, and not otherwise:

1. Corcoran Mill and Warehouse shall issue $2,500.00 par value of said capital stock as soon after the date of this order as practicable, and the remaining $7,500.00 of said stock as the proceeds may be wanted by the warehouse company from time to time for application upon said contract between the warehouse company and A. G. Chatom, above referred to.

2. Said stock herein authorized shall be sold so as to net said warehouse company not less than par.

3. The proceeds of the issue and sale of said stock shall be used solely for the purpose of buying the warehouse and the properties connected therewith under the terms of the agreement between applicant and A. G. Chatom, as hereinbefore authorized.

4. The stock herein authorized to be issued shall be issued on or before December 31, 1918.

5. Corcoran Mill and Warehouse shall keep a true and accurate record of the issue of said stock and shall, on or before the twenty-fifth day of the month following the said issue of said stock, make a report to this Commission, setting forth the disposition of such stock, the consideration received therefor, and the application of the proceeds.

Dated at San Francisco, California, this 24th day of December, 1915.

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DECISION No. 2992.

MARY CONNOLLY ET AL.

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 707.

Decided December 24, 1915.

Complainants, owning certain property in Placer County which they propose to subdivide, allege that defendant owns a pipe line lying adjacent to such property from which they receive a small quantity of water but that defendant has refused them any additional supply therefrom and proposes that they construct at their own expense a lateral from what is known as Antelope Creek, from which point defendant proposes to serve them water. Defendant contended that it did not have a sufficient supply of water available so as to serve complainants with additional amounts, but this matter now having been decided by stipulation in another proceeding before the Commission and the only point now being the conditions under which defendant shall serve the desired amount of water, parties in interest directed to agree upon such conditions or apply to the Commission for a supplemental order establishing same.

Forrest C. Hill, for Complainants.

C. P. Cutten, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The complaint herein alleges, in effect, that complainants, Mary Connolly, Margaret Healy, John H. Atkins and Forrest C. Hill, are the owners of the southeast quarter and the east half of the southwest quarter of section 17 and a fractional part of the south half of the northeast quarter of said section 17, township 11 north, range 7 east, M. D. B. and M., containing 296 acres, more or less; that said land faces for about half a mile upon the main county road between Rocklin and Loomis, in Placer County; that Pacific Gas and Electric Company owns a large water main running along said Rocklin-Loomis road, in front of the property of complainants, from which main the property of complainants has been and is being furnished with a small quantity of water; that the complainants are about to subdivide said tract into small tracts for the purpose of sale; that it will be impossible to develop said land without a sufficient supply of water for irrigation and household use; that Pacific Gas and Electric Company is the owner of the only supply of water which is sufficient for such irrigation and household use, available to the land of complainants; that complainants have applied to Pacific Gas and Electric Company for water for said land, but that Pacific Gas and Electric Company refuses to supply water from

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said pipe line; that Pacific Gas and Electric Company offers to supply water to the land of the complainants from a certain ditch known as Antelope ditch, located approximately 2,600 feet west of complainants' property, but that Pacific Gas and Electric Company requires of complainants that they build, at their own expense, such pipe line as may be required to convey water from said Antelope ditch to the property of the complainants; that the property of complainants is within the territory which Pacific Gas and Electric Company is legally obligated to supply with water; and that the demand of Pacific Gas and Electric Company that the complainants pay for such service pipe line as it may be necessary to construct is unjust and unreasonable. Complainants ask that this Commission compel Pacific Gas and Electric Company to deliver water for irrigation and household use, at the company's own expense, to the property line in front of any part of the land of complainants where such water may be applied for, in such quantities and at such times as requested.

The answer admits that Pacific Gas and Electric Company is the owner of a large water main running along the Rocklin-Loomis road, in front of the property of complainants, and admits that it has supplied water to such property for domestic use not in excess of one miner's inch, and also admits that Pacific Gas and Electric Company has refused to supply water to the land of complainants in excess of the water heretofore supplied. Defendant alleges that its pipe line is not larger than is required to furnish the town of Rocklin with an adequate supply of water for domestic and other uses, and with water for fire protection, and to supply complainants and other consumers with the water which they are now receiving, and that in order to give to the complainants service from the Loomis-Rocklin pipe line, defendant would be compelled to enlarge said pipe line at a cost of at least $20,000.00. Defendant denies that it is under any obligation to supply to complainants any water in excess of one miner's inch, but offers to supply to complainants such quantities of water as it may have available for distribution, provided that complainants will build laterals to connect with defendant's Antelope ditch and will receive and pay for water, under defendant's established rates, supplied at Antelope ditch. Defendant alleges that its practice has been to supply water to consumers only at the ditch and to require its consumers to construct and maintain the laterals leading from its canals and ditches. Defendant asks that the complaint be dismissed.

Public hearings were held at Auburn on February 9, 1915, and in San Francisco on March 18 and April 12, 1915. Briefs have been filed and the case is now ready for decision.

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At the hearings, Pacific Gas and Electric Company made the additional defense that the company has no water available for the irrigation of additional lands above the contour of its proposed Power House No. 6. This point developed into the main defense of Pacific Gas and Electric Company in this case. As this point has now been disposed of under written stipulation and order in Case No. 613, *Montague* vs. *Pacific Gas and Electric Company,* this day decided, the only remaining question is the question of terms and conditions under which Pacific Gas and Electric Company will supply to complainants herein the water reasonably necessary for their purposes.

Now that the question of the water supply has been eliminated, I am satisfied that the parties hereto can agree on the terms under which Pacific Gas and Electric Company will supply water for the use of complainants. However, if the parties, within sixty days from date, can not agree on such terms, they may again come before the Commission, whereupon the Commission will by supplemental order herein, prescribe the terms and conditions upon which the water reasonably necessary for complainants' purposes shall be supplied by Pacific Gas and Electric Company.

I recommend the following form of order:

ORDER.

The above entitled case having been submitted and being now ready for decision, it is hereby ordered as follows:

1. Under written stipulation of Pacific Gas and Electric Company on file in Case No. 613, *Montague* vs. *Pacific Gas and Electric Company,* and the Commission's order therein, Pacific Gas and Electric Company is hereby directed to supply, at its regular established rates, such water as may be reasonably necessary for domestic and irrigation use on the property of complainants described in the opinion herein.

2. If the parties can not agree on the terms and conditions, apart from the rate, on which said water is to be supplied, they may apply to the Railroad Commission, whereupon, after supplemental hearing, the Railroad Commission will, by supplemental order, establish such terms and conditions.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of December, 1915.

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DECISION NO. 2993.

IN THE MATTER OF THE APPLICATION OF FRANK C. DRUM AND WARREN OLNEY, JR., RECEIVERS OF THE PROPERTY OF WESTERN PACIFIC RAILWAY COMPANY FOR AN ORDER AUTHORIZING THE ABANDONMENT OF ITS LINE OF RAILROAD LYING BETWEEN STATIONS OF WALDEN AND TESLA.

Application No. 2010.

Decided December 21, 1915.

Applicant applies for permission to abandon that portion of its branch line running between Walden and Tesla, and it appearing that the revenue from such branch has been practically negligible, application granted, to become effective January 20, 1916, provided that in the mean time the Carnegie Brick and Pottery plant shall not have resumed operation, and provided a revenue sufficient to warrant the continued operation of this branch.

Allan P. Matthew, for Applicant.

E. DeLos Magee, for Carnegie Brick and Pottery Company, Protestant.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This is an application brought under the provision of General Order No. 36 of this Commission which requires that no railroad corporation shall take up or abandon the use of any track upon which passengers or freight have been received or discharged without first having applied for and received the consent of this Commission.

A public hearing was held at San Francisco on December 22, 1915, the matter was submitted and is now ready for decision.

The Tesla branch of the Western Pacific Railway extends from a junction with the main line at the station of Carbona to the station of Tesla, a distance of 13.1 miles. This branch is a portion of a line of railroad that was constructed from Stockton to Tesla for the transportation of the products of a coal mine formerly operated at Tesla, and after the acquisition of the line by the Western Pacific Railway Company and the commencement of operation, the portion of the line between Carbona and Stockton became the main line of the Western Pacific Railway and the portion between Carbona and Tesla was operated as a branch.

The receivers of the Western Pacific Railway Company request permission to abandon and take up the track between the stations of Walden and Tesla, a distance of 1.8 miles, for the following reasons: That the coal mine at Tesla has been abandoned; the machinery at the mine dismantled and removed; the population formerly residing at Tesla has sought other locations; the freight traffic formerly enjoyed

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is no longer existent; and that the expense of maintaining the roadway and track between the stations of Walden and Tesla is not justified by the amount of business which is in sight or could reasonably be developed.

It appears that during the winter season of 1911 washout troubles were in evidence, and that such trouble has been experienced during each successive winter. In the season of 1913 the trouble was severe, and to permit the prompt opening of the line and allow for the movement of traffic temporary repairs were made and in some locations the temporary track was laid in the bed of Corral Hollow Creek. Permanent reconstruction has not been made and the line is therefore subject to high water trouble during each rainy season. During the spring of 1915 temporary repairs were made to the portion of the track now sought to be abandoned, such temporary repairs reaching a cost of $2,447.00.

A statement of the amount of business handled at the station of Tesla for the year ending December 1, 1915, shows the following:

Passenger revenue	None
Freight revenue—	
Inbound, 2,319 pounds	$3 72
Outbound, 2 carloads sand, 1 carload clay	59 98
Old machinery, lumber and other products from the dismantling of coal mine	918 32
Total	$982 02

The above indicates that the normal business enjoyed by the Western Pacific Railway at the station of Tesla for the period of one year amounted to but $63.70, such revenue as was received from the transportation of the products of dismantling the coal mine being *extraordinary* revenue and not fairly comparable as an indication of regular business out of this station. The Western Pacific Railway expended an amount of $2,447.00 in the rehabilitation of track and roadbed against which they received a total revenue of $982.02 from which should be deducted the cost of operation.

The Carnegie Brick and Pottery Company, protestant in this proceeding, owns brick and sewer pipe plants served by the stations of Carnegie and Walden and has secured their sand and clays from the vicinity of Tesla. The testimony of the receiver was that the company had a plant investment in excess of one million dollars, but that the company was now in the hands of a receiver and the plants have not been in operation for a number of years. The plants have been offered for sale for some time and are now advertised for public sale on January 14, 1916. The protestants stated that an order permitting the abandonment and taking up of the track between Walden and Tesla

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might interfere materially with their prospects for the sale of these plants in that the only practicable method of transportation of the sand and clays from the Carnegie Brick and Pottery Company at Tesla to the manufacturing plants at Walden and Carnegie would be eliminated.

It was developed at the hearing of this application that the applicant, some eight months ago, advised the receiver of the Carnegie Brick and Pottery Company of its intention to make application for permission to abandon and remove the track between Carnegie and Tesla and that upon the solicitation of the protestants it was agreed to defer the application for a period of six months to enable the protestants to take action looking to the resumption of operations at Walden and Carnegie or a sale of the property. No results having been achieved toward such end, and in view of the approach of the winter season with the consequent prospect of trouble by reason of flood conditions, the applicant initiated this proceeding.

I am of the opinion, in view of the foregoing facts, that the continuance of the maintenance and operation of the line of the Western Pacific Railway on its Tesla Branch is not justified by the applicants, Frank G. Drum and Warren Olney, Jr., as receivers, there having been no traffic handled during the past year and none in sight for the immediate future in volume which would justify the expense of maintenance and operation. If the receiver of the Carnegie Brick and Pottery Company, or his successor in interest, is able to perfect arrangements resulting in the reopening and operation of the plants at Carnegie and Walden, the tonnage of clays and sand required to be moved from Tesla to Walden and Carnegie would justify the applicant in continuing the maintenance and operation of this portion of the Tesla Branch, and as a sale of this property is advertised to be held on January 14, 1916, and as the entry of an order for the immediate abandonment and taking up of the track might interfere with the disposition of the property of the Carnegie Brick and Pottery Company by the receiver, I suggest that the effective date of the following order be made January 20, 1916, unless satisfactory proof shall be made to this Commission that an amount of traffic sufficient to warrant the continued maintenance and operation of the portion of track now sought to be abandoned will be furnished by the reopening of the brick and sewer pipe plants at the stations of Carnegie and Walden.

I recommend the following form of order:

ORDER.

Frank G. Drum and Warren Olney, Jr., as receivers of the property of the Western Pacific Railway Company having applied to this Commission for permission to abandon and take up that portion of the

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track on the so-called Tesla Branch of the Western Pacific Railway between the stations of Walden and Tesla, a distance of 1.8 miles, a public hearing having been held, the matter submitted and the Commission being fully advised in the premises,

It is hereby ordered that unless satisfactory proof is made to this Commission prior to January 20, 1916, by the receiver of the Carnegie Brick and Pottery Company, protestant, or his successor in interest, that traffic sufficient to justify the continuance of the maintenance and operation of the section of track by this proceeding sought to be abandoned will be furnished between the stations of Walden and Tesla on the Tesla Branch of the Western Pacific Railway, that Frank G. Drum and Warren Olney, Jr., as receivers of the property of Western Pacific Railway Company be and they hereby are authorized to abandon the maintenance and operation, and take up the track now laid between said points, and such permission is to be effective as of January 20, 1916, unless satisfactory proof of tonnage to be transported shall have been made to this Commission as hereinabove specified.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of December, 1915.

DECISION No. 2994.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

vs.

COAST COUNTIES GAS AND ELECTRIC COMPANY.

Case No. 289.

Decided December 24, 1915.

REPORT OF THE COMMISSION.

Upon request of complainant made at a public hearing held on December 23, 1915, the above entitled proceeding is hereby dismissed without prejudice.

Dated at San Francisco, California, this 24th day of December, 1915.

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DECISION NO. 2995.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY
vs.
GREAT WESTERN POWER COMPANY.

Case No. 286.

Decided December 21, 1915.

REPORT OF THE COMMISSION.

Upon request of complainant made at a public hearing held on December 23, 1915, the above entitled proceeding is hereby dismissed without prejudice.

Dated at San Francisco, California, this 24th day of December, 1915.

DECISION NO. 2996.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY
vs.
GREAT WESTERN POWER COMPANY.

Case No. 292.

Decided December 21, 1915.

Upon request of complainant made at a public hearing held on December 23, 1915, the above entitled proceeding is hereby dismissed without prejudice.

Dated at San Francisco, California, this 24th day of December, 1915.

DECISION NO. 2997.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY
vs.
SIERRA AND SAN FRANCISCO POWER COMPANY.

Case No. 285.

Decided December 21, 1915.

REPORT OF THE COMMISSION.

Upon request of complainant made at a public hearing held on December 23, 1915, the above entitled proceeding is hereby dismissed without prejudice.

Dated at San Francisco, California, this 24th day of December, 1915.

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Decisions Nos. 2998 and 2999, grade crossings; not printed. See end of volume.

Decision No. 3000.

IN THE MATTER OF THE APPLICATION OF AMOS H. STINSON, MABEL IDELLA SKINNER AND NEWMAN L. FITZHENRY FOR AN ORDER FIXING WATER RATES AT STINSON BEACH, MARIN COUNTY.

Application No. 1961.

Decided December 24, 1915.

Applicants, operating a small water distributing system at Stinson Beach, at which the majority of residents are merely summer visitors, applies to the Commission to establish a schedule of rates, and after consideration of the value of its system, not including land values, a schedule of from $4.00 to $6.00 annually for the different classes of consumers established, to become effective January 1, 1916.

George H. Harlan, for Applicant.

A. H. Upton, for the Consumers.

Report of the Commission.

This is an application by Amos H. Stinson, Mabel Idella Skinner and Newman L. Fitzhenry for an order fixing the rates for water furnished to the inhabitants of the subdivisions of land within the boundaries of what is known as "Stinson Ranch," being the most southeasterly portion of the Rancho Las Baulines, in Bolinas Township, Marin County. This community is generally known as "Stinson Beach," and consists of 35 or 36 consumers, including two small hotels and four or five families who live there throughout the year, the remainder being families who are there a few weeks or months in summer and who may or may not go there for their week ends throughout the rest of the year.

Applicants are the joint owners of the water plant which serves the above described community. From the evidence it appears that this plant was originally installed by applicants' predecessors in order to make their land available for purposes of subdivision, and that the plant has been somewhat extended by the present owners, who are also the owners of most of the unimproved property in the immediate vicinity.

The water is obtained direct from a perennial stream flowing through the Stinson ranch. Most of the watershed is comparatively inaccessible, and although stock range over a portion of it at times, there is no human pollution, and apparently the water is at present of good quality.

The plant was first built in 1906 and amplified in 1910. The present system consists of some 6,800 feet of wrought-iron pipe, a large portion of which is galvanized, conveying the water to each house on the tract. From the intake a short four-inch pipe carries the water to a small redwood tank of about 1,100 gallons capacity. The water is conveyed from

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the tank by means of a two-inch transmission main. None of the distribution pipes exceed two inches in diameter, the greater portion of them being three-quarter inch or one inch. The evidence further shows that the pipes have not been buried to a proper depth and they occasionally appear exposed, the result being that some of the consumers can not obtain cool water in warm weather.

An examination of the property was made by one of this Commission's assistant engineers, Mr. H. F. Clark, and it was stipulated by all parties at the hearing that his figures as to the value of the physical properties of the plant, irrespective of the value of the land connected therewith, might be considered in evidence. No other estimate of the value of the plant or its cost new was offered. The figures submitted in Mr. Clark's report for the estimated cost new of that portion of the plant above mentioned are as follows:

Pipe system	$1,122 00
Tank	54 00
Total	$1,176 00

Applicants also have approximately $50.00 worth of tools and implements used and useful in connection with their plant.

A public hearing was held on this matter in San Francisco on December 13, 1915, at which the general manager of the water plant, Mr. Newman L. Fitzhenry, testified on behalf of the applicants, and the following witnesses testified on behalf of the consumers: Frank V. Airey, Mrs. Thomas Spencer, Jules Hoff, Mrs. G. D. Harper, F. Worrall, Joseph Dunn, A. E. Anderson, A. H. Upton, and George H. Harlan.

These witnesses represented every class of consumer, from the proprietor of one of the hotels to the owner of a one-room cottage, and all of them, while willing to pay whatever rates might be determined by this Commission to be reasonable, expressed their preference for flat rates by the year rather than rates by the month.

Several of the witnesses testified that they had bought the land from applicants' predecessors upon an oral assurance that their water rate would not be more than $6.00 per year, and applicants frankly stated that this plant was installed in order to assist the owners of the Stinson ranch in selling the lots of their subdivision. Applicants further stated that they did not ask at the present time for interest upon any of the land reserved by them for their watershed or for alleged water rights connected therewith, but that all they desired at this time was enough income to cover reasonable maintenance and operating expenses and interest and depreciation on their pipe, tank and tools.

Evidence was introduced as to a portion of the pipe having been second-hand and somewhat depreciated at the time of installation, but

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this constituted only a small portion of the whole and was considered by this Commission's engineer in arriving at the estimate above referred to.

It further appeared that in the past there has been more or less trouble with the supply, owing to the intake having occasionally become clogged with leaves and twigs. Mr. Fitzhenry testified, however, that several months ago applicants installed a new screen at the intake, and that under the plant's present management he felt confident conditions would be considerably improved.

In authorizing the rates hereinafter set forth, we have allowed a certain increase in the item for maintenance and operation over what applicants have devoted to this item in the past, in order to enable them to prevent in the future the interruptions of service similar to those complained of at the hearing.

It also appears that on Sundays and holidays during the summer months there is often a shortage of water for the consumers on the higher levels. This shortage is due to the small storage capacity of the plant and to the large drafts upon the supply by certain of the consumers. There are three possible remedies: First, the installation by applicants of larger storage facilities, which, however, is impracticable on account of the large outlay required and the heavy additional burden which this would entail upon the consumers. Second, the establishment by this Commission of rules for the prevention of the excessive use of water at such times, but rules which are not enforced are worse than useless. The most practicable method of avoiding this trouble is for each consumer to realize that during the times of a large demand for water if one uses more than his share some other consumer must suffer, and accordingly to be as considerate as possible of others. We should suggest that all consumers during meal hours should do as little irrigating as possible, and that whenever there is a large influx of people, as during Sundays and other holidays, they should either stop irrigating entirely or, if any consumers wish to irrigate at this time, they should provide themselves with individual tanks from which they can irrigate without affecting the general supply. If the consumers refuse to adopt some such system as suggested above, and if any number of them continue to use water extravagantly when the demand is greatest, this Commission may have to enforce the third possible remedy, which will be to order the installation of meters throughout the system. This would unquestionably check the waste of water, but, on the other hand, it would materially increase not only the fixed capital but also the maintenance and operating expenses, and which would in turn materially increase the cost of water to all of the consumers.

The rates hereinafter authorized will, in the opinion of this Commission, be sufficient to cover applicants' maintenance and operating

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expenses and yield seven per cent interest upon the value of the pipe, tank and tools, together with the annual depreciation upon the same computed by the sinking fund method. As above stated, applicants did not ask us to consider, and this Commission has not considered, the value of the 250 or 300 acres which applicants claim are used and useful in connection with their water plant.

ORDER.

Amos H. Stinson, Mabel Idella Skinner and Newman L. Fitzhenry having filed with this Commission an application for an order fixing the rates for water at Stinson Beach, Marin County;

And a public hearing having been held on said application and the matter having been submitted and being now ready for decision, this Commission hereby finds as a fact that the existing rates in so far as they differ from the rates hereinafter authorized are noncompensatory and unreasonable and that the rates hereinafter authorized are just and reasonable rates to be charged by said applicants.

Basing its conclusion upon the foregoing findings of fact and on other findings which are contained in the opinion which precedes this order,

It is hereby ordered that applicants be and the same are hereby authorized to publish and establish the following rates for water to be furnished:

1. For cottages of one room, where the land occupied by the cottage and the land irrigated together do not exceed 1,500 square feet, per annum	$4 00
2. For all other residences, where the land occupied by the house and the land irrigated together do not exceed 7,500 square feet, per annum	6 00
3. For each additional 1,000 square feet of land irrigated, per annum	30
4. For hotels the following schedule:	
For the dining room, per annum	5 00
For the barroom, per annum	3 00
For each bedroom (which term shall include rooms in cottages connected with the hotel and which are not supplied with housekeeping facilities), per annum	50
5. For stage or livery stables, per annum	6 00

It is further ordered that the rates herein authorized shall be payable for each calendar year, annually in advance.

It is further ordered that the rates herein authorized shall become effective upon January 1, 1916, provided that applicants shall, within thirty days from the date of this order, publish and file with the Railroad Commission its schedule of rates in duplicate.

Dated at San Francisco, California, this 24th day of December, 1915.

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Decision No. 3001.

IN THE MATTER OF THE APPLICATION OF BOARD OF SUPERVISORS, SACRAMENTO COUNTY, CALIFORNIA, FOR AN ORDER DECLARING A CERTAIN CROSSING AT NORTH SACRAMENTO STATION, IN THE COUNTY OF SACRAMENTO, CALIFORNIA, TO BE A PUBLIC CROSSING.

Application No. 1923.

Decided December 21, 1915.

Applicant applies for permission to establish El Camino avenue as a public crossing over the tracks of Northern Electric Company, just north of the city of Sacramento, and it appearing that though traffic at this point is not heavy at the present time, there is a private crossing at present being used and a public crossing will shortly be necessary, application granted, such crossing to be protected by the usual crossing sign.

H. B. Bradford, district attorney, for Applicant.

H. O. Brown, for Northern Electric Railway Company.

E. Hendrickson, secretary for North Sacramento Land Company.

Report of the Commission.

This application was filed by the board of supervisors of Sacramento County on November 16, 1915, and asks for permission to open a public highway known as El Camino avenue in lieu of an existing private crossing over the track of Northern Electric Railway Company in a subdivision made by the North Sacramento Land Company in Sacramento County north of the city of Sacramento. A public hearing was held in Sacramento on December 15, 1915.

The situation here is peculiar. The North Sacramento Land Company owns property on both sides of the Northern Electric right of way and have subdivided this property and placed it on the market. The track of the Northern Electric Railway Company runs in a northeasterly and southwesterly direction in this vicinity and on the southwesterly side of the track the subdivision, which is well built up, is easily accessible from Sacramento by the state highway which forms one boundary of the tract. On the opposite side of the railway's reservation there are some three hundred acres which can not now be reached by public road and it is to secure a public road to serve this land that this application has been filed.

The nearest public crossings to the proposed crossing are about a mile distant toward Sacramento and two miles distant in the opposite direction. To enable residents of this three hundred acres to secure access to the first crossing would necessitate the construction of a road nearly a mile long over lands which are under water for several months during the year. To reach the second crossing it would be necessary

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to build a road about two miles long through property now owned by others than the North Sacramento Land Company and its use would occasion a detour of four miles each way to and from Sacramento The three hundred acres which this crossing has been designed to serve have been but recently subdivided and placed on the market. But two families live in this latter subdivision at the present time and but six lots have been sold. Undoubtedly the private crossing would continue to serve this territory for some time to come, but there seems to be no reason why a private crossing used by the general public should not be in fact a public crossing, and in this case it is apparent that it is entirely reasonable that there should be such a public crossing in the location proposed even though the traffic over it will be extremely light for some time to come.

The Northern Electric Railway Company does not oppose this crossing. A clear view can be had of approaching trains on either side of the track and no protection is needed other than the usual crossing sign.

ORDER.

Board of Supervisors, Sacramento County, California, having applied to the Commission for an order declaring a certain private crossing at North Sacramento Station, in the county of Sacramento, California, to be a public crossing, and a hearing having been held, and it appearing to the Commission, for the reasons set forth above, that this application should be granted subject to certain conditions,

It is hereby ordered that this application be and the same hereby is granted subject to the following conditions, viz:

1. Said crossing shall be constructed of a width not less than twenty-four (24) feet, with grades of approach not exceeding four (4) per cent; shall be protected by suitable crossing sign, and shall in every way be made safe and convenient for the passage thereover of vehicles and other road traffic.

2. The entire expense of constructing said crossing shall be borne by applicant.

3. The expense of maintaining said crossing thereafter up to within two (2) feet of the rails of Northern Electric Railway Company shall be borne by applicant. The expense of maintaining this crossing thereafter between the rails and to a distance of two (2) feet outside thereof shall be borne by Northern Electric Railway Company.

4. The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem to be right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

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DECISION No. 3002.

A. C. CHRISTENSEN

vs.

PEOPLES WATER COMPANY.

Case No. 899.

Decided December 24, 1915.

George Ingraham, for Complainant.

McKee & Tasheira, for Defendant.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainant having filed a written request that the above entitled matter be dismissed,

It is hereby ordered that the above entitled proceeding be and the same is hereby dismissed.

Dated at San Francisco, California, this 24th day of December, 1915.

Decision No. 3003, grade crossing; not printed. See end of volume.

DECISION No. 3004.

G. S. FAULKNER ET AL.

vs.

VENTURA COUNTY POWER COMPANY.

Case No. 569.

R. E. BRAKEY ET AL.

vs.

VENTURA COUNTY POWER COMPANY.

Case No. 570.

Decided December 24, 1915.

Complainants bring into question the rates and particularly the service of respondent company, operating gas and electric generating and distributing systems in certain cities and unincorporated territory in the county of Ventura, alleging that the rates for electricity are unreasonable and that the service of both gas and electricity is frequently interrupted and otherwise poor and unsatisfactory.

Held. The evidence showing that defendant is taking all necessary steps to remedy the main causes of dissatisfaction, *i. e.*, service, such portion of the complaint

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dismissed, and the following schedules established to become effective January 1, 1916: Electric lighting, domestic and commercial, first 20 kilowatt hours, per month, 10 cents per kilowatt hour; next 80, 8 cents per kilowatt hour; next 100, 7 cents per kilowatt hour; over 200, 6 cents per kilowatt hour; minimum, $1.00 per meter per month. Sign lighting, 6 cents per kilowatt hour. Power service exclusively, ranging from 6 cents per kilowatt hour for a monthly consumption up to 200, to 2 cents per kilowatt hour for a monthly consumption of over 10,000 kilowatt hours; minimum charge, $1.00 per month per horsepower of installed capacity. Irrigation, 2 cents per kilowatt hour; minimum, $12.00 per horsepower, connected load, per year. Irrigation power, 7 cents per kilowatt hour for first 100 to 75 cents per kilowatt hour in monthly amounts in excess of 100,000 kilowatt hours; minimum, $1.75 per horsepower, connected load, per month, or $18.00 per horsepower, connected load, per year. Heating, cooking, 4 cents per kilowatt hour; minimum, $2.00 per month per consumer, provided that all consumers at present receiving service from defendant shall continue to receive service under the schedule at present in effect, unless such consumers should desire service under the schedules herein established or shall discontinue service.

Don C. Boucker and *George E. Farrand,* for Complainants.

Gibson, Dunn & Crutcher and *S. M. Haskins,* for Defendants.

REPORT OF THE COMMISSION.

EDGERTON, *Commissioner.*

Case No. 569 is the complaint of G. S. Faulkner and twenty-six other residents of the county of Ventura against the Ventura County Power Company, complaining in effect that the rates charged by the defendant company for electric lighting are unjust and unreasonable, and request that the Commission determine the just and reasonable rates to be charged by defendant for electric service, not only for lighting, but also for cooking and power purposes.

Case No. 570 is the complaint of R. E. Brakey and thirty-five other residents of Ventura County, most of whom live in the city of Ventura, against the Ventura County Power Company, complaining in effect that the electric service is inadequate and inefficient, and that said electric service is frequently interrupted and impaired or shut off without notice, and that such interruptions have resulted in damage and inconvenience to the complainants and other residents of Ventura County. Complainants allege that the cause of such interruptions is largely due to the fact that the company does not maintain sufficient reserve capacity in the county of Ventura, and further that the steam plant at Oxnard does not insure service in Ventura due to frequent failures of the transmission line across the Santa Clara River. Complainants further direct their complaint against the quality and continuity of the gas service, alleging in effect that the gas is offensive, obnoxious and unsanitary, and further that the supply is not continuous due to the dependence of continuity of gas supply upon the electric service. Complainants request that the Commission require the company to install such additional

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facilities as are necessary to enable defendant to furnish adequate and sufficient supply of electricity and a good quality of gas.

In its answer the defendant denied all of the material allegations in the case.

The Ventura County Power Company operates an electric generation, transmission and distribution system in the county of Ventura, serving the incorporated cities of Ventura, Oxnard, Santa Paula and Fillmore and the unincorporated territory in the Santa Clara Valley. It also operates a gas generating plant near Ventura and a transmission and distribution system serving the cities of Ventura, Oxnard and Santa Paula and the unincorporated territory along the transmission lines connecting these cities. A water distribution system owned by the company serves the town of Ventura and an irrigation system is operated in what is known as the Mound district.

The company's electric system consists of a transmission line supplied from the Southern California Edison Company's lines at Castaic, which extends from that point westerly through the cities of Fillmore and Santa Paula to Ventura. A branch line across the Santa Clara River at Saticoy extends to Oxnard where it connects with the company's 500 kilowatt steam electric generating plant. The distribution system consists of lines extending from substations located at the various cities. A considerable system serving lighting and irrigation power extends into the rural territory.

The present lighting and power rates of the company are as follows:

Rate Schedule for Lighting Current.

Rates for electric current furnished by this company for lighting purposes, commencing January 1, 1912, will be as follows:

9 to 75 kilowatt hours	12 cents
76 to 150 kilowatt hours	11 cents
151 to 300 kilowatt hours	10 cents
301 to 600 kilowatt hours	9 cents
601 to 1,200 kilowatt hours	8 cents
Over 1,200 kilowatt hours	7 cents

A minimum bill of $1.00 per month will be rendered for each meter installed, and a minimum charge of $2.50 per month for each arc light furnished by meter measurement.

Rate Schedule for Electric Power.

Effective January 1, 1912, the rates for electric current for power purposes furnished by this company will be uniform throughout Ventura County, and as follows:

For monthly consumption of 17 to 200 kilowatt hours	$0.06 per kilowatt hour
For monthly consumption of 201 to 400 kilowatt hours	.05 per kilowatt hour
For monthly consumption of 401 to 749 kilowatt hours	.04 per kilowatt hour
For monthly consumption of 750 to 1,000 kilowatt hours	30.00 per month
For monthly consumption of 1,001 to 6,666 kilowatt hours	.03 per kilowatt hour
For monthly consumption of 6,667 to 10,000 kilowatt hours	200.00 per month
For monthly consumption of 10,000 and over	.02 per kilowatt hour

A minimum charge of $1.00 per month will be made for each meter installed.

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From the complaint and the evidence submitted in the case it appears that the main cause for complaint against the electric service of the defendant was due to a number of interruptions of electric service during the year of 1913, which resulted in considerable inconvenience to complainants. An analysis of these interruptions show that the most important cause was the failure of the transmission line, which was caused by the heavy storms of that year, as the supply both from Castaic and Oxnard was interrupted by the Santa Clara River.

The Pacific Light and Power Corporation was, at the time of the hearing, constructing a duplicate line from its own system through the Chatsworth and Somis districts to Saticoy along a route less liable to cause interruption, and it appears that the completion of this construction will remedy the matter of electric service.

As regards the matter of gas service, it appears that the quality and supply had not been up to standard, but that the company was taking steps to improve the quality and was ready to co-operate with the Commission's gas experts in bettering the manufacture of gas and gas service, and also would issue such rules and regulations regarding the use and operation of gas appliances as would assist the consumers. An informal report of the Commission's gas expert, received at this time, is to the effect that the gas supply has been improved and that the company is extending its efforts to continually better the service.

Referring now to the matter of electric rates charged by the Ventura County Power Company, evidence was introduced by Mr. Ready showing an estimated cost of service for the year 1915, based upon his investigation of the valuation and operation of the defendant's property.

From a consideration of this analysis, it appears that at the present time the lighting business is returning a much larger net revenue upon its proportion of the investment than is either the industrial or agricultural power.

The present power consumers were obtained under a rate which required no minimum bill other than $1.00 per month per consumer for industrial power, and practically no minimum at all for agricultural power. As a result there are at present a large number of motor installations from which the revenue per horsepower installed is relatively small. Should a rate commensurate with the cost of service as determined be charged to these consumers, the result would be that the consumers would have to discontinue their service owing to the excessive rate resulting, and the net result would be a loss of revenue to the company and an added burden on the remaining consumers. It is, therefore, not practicable to put in effect a rate for power in excess of that now charged as far as the present consumers are concerned.

As regards new consumers, it appears only reasonable as determined by the Commission in other cases, that motor installations should be

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required to pay a minimum dependent upon the size of the motors. The present energy rate for power is not too low; in fact, the main cause of the small return from these installations is due to the fact that no minimum has been required. I believe that the company will obtain more satisfactory results in the end by directing its efforts to increasing the volume of business rather than by keeping the rates for power as high as they are now.

The following rates were recommended by Mr. Ready as fair and reasonable rates for lighting business:

Residence and Commercial Lighting Service.

Character of Service.

This schedule applies to residence and commercial lighting and also for energy consumed by electric irons, toasters, sewing machine motors, or any of the various lamp socket domestic appliances.

Rate.

First 20 kilowatt hours per month per meter	10 cents per kilowatt hour
Next 80 kilowatt hours per month per meter	8 cents per kilowatt hour
Next 100 kilowatt hours per month per meter	7 cents per kilowatt hour
Over 200 kilowatt hours per month per meter	6 cents per kilowatt hour

Minimum monthly charge, $1.00 per meter.

These rates contemplate that the company should be allowed 8 per cent return upon the total physical valuation of the property.

The defendant, which is now closely connected with the Pacific Light and Power Corporation has advised the Commission that it will put into effect the above schedule recommended by the Commission, and further will put into effect certain other industrial and lighting rates which are now effective upon the Pacific Light and Power Corporation's general system, and has filed a stipulation with the Commission that if such are satisfactory to the Commission it will not request the right to introduce further evidence in either of these cases.

The Pacific Light and Power Corporation further announces that the same rates as will be effective on the Ventura County Power Company's system will be charged in that portion of Ventura County now served or to be served by it.

It is proposed by defendant that the present power consumers be allowed to continue upon the rates for that class of service now in effect upon the Ventura County Power Company, which rates include no minimum other than $1.00 per month per service. These consumers may, however, if they desire, obtain service under any of the proposed rates for their class, which the company stipulates it will put in effect.

In the proposed rates there is included a minimum monthly bill based upon installed capacity of the motors or other power using devices

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With special reference to industrial power consumers, the company proposed to add a minimum charge of $1.00 per horsepower per month to the present rate schedule so far as consumers to be considered in the future are concerned.

Considering the fact that the proposed lighting rate is that recommended by the Commission's engineers, and that the rates to be put into effect for other classes of service will not result in an increase to the present consumers, I recommend that the rates as set forth in the following order be put into effect.

I submit the following form of order:

ORDER.

The above entitled proceedings having been consolidated for hearing and a public hearing having been held thereon and defendant having submitted a stipulation, under date of December 17, 1915, that it will put into effect on January 1, 1916, the rates hereinafter set out, and it appearing that such rates are reasonable, and the cases being now ready for decision.

It is hereby ordered as follows:

1. Ventura County Power Company shall file with the Railroad Commission the schedule of rates hereinafter set out, and shall make such rates effective as of January 1, 1916.

SCHEDULE NO. 1.

Residence and Commercial Lighting Service.

Character of Service.

This schedule applies to general residence and commercial lighting and also for energy consumed by electric irons, toasters, sewing machine motors, or any of the various lamp socket domestic appliances.

Rate.

First 20 kilowatt hours per month per meter	10 cents per kilowatt hour
Next 80 kilowatt hours per month per meter	8 cents per kilowatt hour
Next 100 kilowatt hours per month per meter	7 cents per kilowatt hour
Over 200 kilowatt hours per month per meter	6 cents per kilowatt hour

Minimum monthly charge, $1.00 per meter.

SCHEDULE NO. 2.

Sign Lighting Service.

Character of Service.

This schedule applies to all kinds of alternating current service for all classes of consumers where such service is used exclusively for sign lighting.

Rate.

6 cents per kilowatt hour.

Minimum monthly charge, $1.00 per meter.

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SCHEDULE NO. 3.

Alternating Current—Industrial Power Schedule.

Character of Service.

This schedule applies to all kinds of alternating current service for all classes of consumers where for any one consumer said service is used exclusively for the operation of motors having an aggregate nominal capacity of 1 horsepower or over; for heating purposes where the aggregate nominal capacity of the heating devices is 1 horsepower or over; for charging storage batteries where the aggregate nominal power required is 1 horsepower or over; for operating rectifier sets where the aggregate nominal power required is 1 horsepower or over; or for the operation of two or more of the above mentioned classes of equipment having an aggregate nominal capacity of 1 horsepower or over. If, however, such units of equipment mentioned above, for which the power used can be measured through one commercial integrating kilowatt hour service meter, have when considered together not the required aggregate minimum capacity as stated above, then the power used in such units of equipment will not come under this schedule.

Rate.

For monthly consumption of 0 to 200 kilowatt hours_____	$0.06 per kilowatt hour
For monthly consumption of 201 to 400 kilowatt hours____	.05 per kilowatt hour
For monthly consumption of 401 to 749 kilowatt hours____	.04 per kilowatt hour
For monthly consumption of 750 to 1,000 kilowatt hours___	30.00 per month
For monthly consumption of 1,001 to 6,666 kilowatt hours__	.03 per kilowatt hour
For monthly consumption of 6,667 to 10,000 kilowatt hours_	200.00 per month
For monthly consumption of 10,000 and over_____	.02 per kilowatt hour

Minimum charge, $1.00 per month per horsepower of installed capacity in motors.

SCHEDULE NO. 4.

Alternating Current—Irrigation Power Schedule.

Character of Service.

This schedule applies to all kinds of alternating current power service for all classes of power consumers where, for any one consumer, said service is used exclusively for the operation of motors having an aggregate nominal capacity of 1 horsepower or over, where said motors are used exclusively for pumping water for irrigation purposes.

Rate.

2 cents per kilowatt hour.

Minimum charge, $12.00 per horsepower, connected load, per year.

SCHEDULE NO. 5.

Alternating Current—Irrigation Power Schedule.

(Optional)

Character of Service.

This schedule applies to all kinds of alternating current service for all classes of power consumers where, for any one consumer, such service is used exclusively for the operation of motors having an aggregate nominal capacity of 1 horsepower or over, and where said motors are used exclusively for pumping water for irrigation purposes.

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Monthly Schedule.

Consumption during month, kilowatt hours	Rate per kilowatt hour, cents	Consumption during month, kilowatt hours	Rate per kilowatt hour, cents
First 100	7.00	Next 10,000	1.30
Next 400	6.00	Next 10,000	1.20
Next 500	4.75	Next 10,000	1.10
Next 500	4.00	Next 10,000	1.00
Next 500	3.00	Next 25,000	0.90
Next 1,000	2.00	Next 25,000	0.80
Next 3,000	1.50	Over 100,000	0.75
Next 4,000	1.40		

Minimum charge: $1.25 per horsepower, connected load, per month, or $18.00 per horsepower, connected load, per year; the horsepower of said connected load being the aggregate nominal horsepower capacity of the consumer's motors.

SCHEDULE NO. 6.

Alternating Current—Power Schedule for Heating and Cooking.

Character of Service.

This schedule applies to all kinds of alternating current power service for all classes of power consumers, where, for any one consumer, said service is used exclusively for heating purposes where the aggregate nominal capacity of the heating devices is 1 horsepower or over; for charging storage batteries where the aggregate nominal power required is 1 horsepower or over; for operating rectifier sets where the aggregate nominal power required is 1 horsepower or over; or for the operation of any two or more of the above mentioned classes of equipment having an aggregate nominal capacity of 1 horsepower or over. If, however, such units of equipment mentioned above, for which the power used can be measured through one commercial integrating kilowatt hour service meter, have, when considered together, not the required aggregate minimum capacity as stated above, then the power used in such units of equipment will not come under this schedule.

Rate.

4 cents per kilowatt hour.

Minimum charge: $2.00 per month per consumer.

It is hereby further ordered that:

1. Pending a determination of the effect of the new power rates herein authorized, all consumers operating under the present power schedule shall be allowed to continue to receive service under the rates they have heretofore paid and Ventura County Power Company shall file with the Commission by February 1, 1916, a list of all industrial and agricultural power consumers operating under its present power schedule, and continue to serve these consumers at the present rates until the Commission shall order otherwise, except that these rates may be cancelled.

a. Upon the consumer electing to operate under any other schedule herein ordered or later put in effect on the defendant's system.

b. Upon the consumer requesting the discontinuance of service,

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It is hereby further ordered that the complaint against the quality of electric and gas service is dismissed without prejudice.

The foregoing opinion and order are hereby ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of December, 1915.

DECISION No. 3005.

WILLIAM PAXTON MONTAGUE ET AL.

vs.

PACIFIC GAS AND ELECTRIC COMPANY.

Case No. 613.

Decided December 24, 1915.

Complainants, property owners in Placer County, bring into question the rate of $45.00 per miner's inch charged by defendant for water for irrigation purposes and also petition the Commission to prevent defendant from proceeding with the construction of a proposed additional power house which, if completed would tend to divert water necessary to irrigate the lands of complainants. Defendant in answer denies that complainants have any right to the additional water secured by the raising of its Lake Spaulding Dam, that the Commission has no power to compel it to serve any additional territory as its additional waters were never dedicated to the public use and the public has no claim upon them whatever.

***Held,* That a reasonable adjustment of the difficulties herein presented would be an arrangement whereby defendant would deliver an additional 80 miner's inches to the district between Colfax and Power House No. 4, an additional 600 miner's inches to the district between Power Houses Nos. 4 and 5 and such additional waters as may be necessary to the district below Power House No. 5, and such arrangement being agreeable to defendant, order made accordingly. As regards rates, in view of the fact that defendant will be obliged to incur large expenditures to provide facilities for the distribution of the additional water herein required to be delivered, that the present rates should remain in effect until such improvements have been made, at which time should they still be deemed excessive, the matter will again be taken under consideration.**

W. H. Carlin and *Ben P. Tabor,* for Complainants.

Charles P. Cutten, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The two chief issues in this case are the reasonableness of the rate of $45.00 per miner's inch charged by Pacific Gas and Electric Company for water sold for irrigation in Placer County and the supply of water by Pacific Gas and Electric Company for irrigation on additional acreage in eastern Placer County.

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The amended complaint herein was filed by William Paxton Montague in behalf of himself and some 187 other landowners in eastern Placer County. The amended complaint alleges, in effect, that the rate charged for water by Pacific Gas and Electric Company for irrigation in Placer County is $45.00 per miner's inch; that said rate is excessive and unreasonable, and if continued will cause water users to discontinue the use of water from Pacific Gas and Electric Company's system; and that the flow of water delivered by Pacific Gas and Electric Company is frequently obstructed by debris, thus causing a considerable percentage of loss of water to water users. The amended complaint further alleges, in effect, that during the last 34 years, the major portion of the water devoted by defendant and its predecessors has been used by plaintiffs and their neighbors for irrigation; that the territory upon which said water has been used for irrigation is located in Placer County, mostly above and adjacent to the town of Newcastle; that during said 34 years, plaintiffs and their predecessors in interest have purchased and paid for their lands, clearing the same from time to time as rapidly as possible, and reducing the same to a high state of cultivation; that the development of the lands occupied by the plaintiffs has kept pace with the development of the system of dams, ditches and canals owned by Pacific Gas and Electric Company, and that plaintiffs and their neighbors have still many hundreds of acres of land, portions of their original holdings, which have not as yet been brought under cultivation and irrigation, but which the owners thereof desire to irrigate from the irrigation system of Pacific Gas and Electric Company; that Pacific Gas and Electric Company has recently increased its impounding facilities so that the company will hereafter be able to impound and carry through its irrigation system approximately 11,000 miner's inches of water in excess of the water heretofore impounded and carried through its irrigating system; that all said additional water can be used in the further development and irrigation of the lands of plaintiffs and their neighbors along and within reach of the line of the distributing system of Pacific Gas and Electric Company; that unless prevented by this Commission, Pacific Gas and Electric Company will take said 11,000 miner's inches of additional water beyond the lands of plaintiffs and their neighbors, thereby depriving them of all right to use the same; and that Pacific Gas and Electric Company is about to install a large electrical power plant east of the lands of plaintiffs, in which the water controlled by Pacific Gas and Electric Company will be used to such an extent as to make it impossible for Pacific Gas and Electric Company to continue to supply to plaintiffs even the amount of water heretofore supplied for irrigation purposes. Complainants ask that the Railroad Commission make its order establishing a reasonable rate to be charged by Pacific Gas and Electric Company for water

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sold for irrigation, and also that this Commission prevent defendant from taking any of its additional waters beyond the lands of plaintiffs and their neighbors and from installing any power plant which will in any way interfere with the full, fair and equitable right of the plaintiffs and their neighbors to use the water for irrigation purposes.

The answer denies that the rate of $45.00 per miner's inch for water used for irrigation is excessive; denies that the flow of the water delivered by Pacific Gas and Electric Company is obstructed by débris; and denies the other material allegations of the complaint. Defendant alleges that it has increased its impounding facilities by constructing a dam 225 feet high across the South Yuba River at the foot of Lake Spaulding, thus enabling defendant to impound 38,000 acre-feet of water in addition to that formerly impounded, making a total of 43,500 acre-feet stored with the dam at its present height; that defendant is able to impound in other lakes tributary to Lake Spaulding 40,850 acre-feet of water; and that defendant is unable to convey through its distributing system any water in addition to that which was conveyed in 1914. Defendant further alleges that in addition to the construction of said dam at Lake Spaulding to a height of 225 feet, it has constructed what is known as the Drum Canal, conveying water from Lake Spaulding to the Drum forebay, located in the north half of the southwest quarter of section 16, township 16 north, range 11 east, M. D. B. and M., whence the water is diverted through the Drum power house, which is located in the fractional northwest quarter of section 17, township 16 north, range 11 east, M. D. B. and M. Defendant also alleges that it has enlarged the Bear River canal and has commenced the construction of Power House No. 4, located near Clipper Gap, and Power House No. 5, located near Auburn. Defendant has also purchased certain lands and rights of way in connection with a proposed Power House No. 6, to be located near Newcastle. Defendant alleges that large sums of money have been spent in said project.

Defendant avers that it "has never held itself out as willing, and is not now willing to use any part of the water which it will require to operate power houses numbers 4, 5 and 6 for irrigation or domestic purposes until said water shall have passed through said power houses. It is and has been defendant's purpose to divert said water to irrigation and domestic uses after it has reached the level of Power House No. 6."

Defendant sets forth a number of petitions by it to the Railroad Commission and orders of the Railroad Commission granting certificates of public convenience and necessity in connection with the work done and proposed to be done under said project, and authorizing the issue of securities to enable Pacific Gas and Electric Company to secure the necessary funds. Defendant alleges that by virtue of the orders

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thus made, the Railroad Commission is barred from taking any further action in this proceeding.

Defendant further avers that this Commission has no jurisdiction to compel defendant to supply water to any additional lands in eastern Placer County, on the ground that defendant has never dedicated any portion of the additional water conserved or to be conserved by the erection of the Spaulding dam, to the public use of supplying water to the complainants or any of them, and on the further ground that the enforcement of any order of the Railroad Commission compelling defendant to supply complainants with water in addition to the water heretofore supplied would deprive defendant of its property without due process of law and would deny to defendant the equal protection of the laws, in violation of the Constitution of the United States and the Constitution of the State of California.

Defendant asks that the complaint be dismissed in so far as the supply of water to additional lands is concerned and that if the Commission establishes rates for water supplied for irrigation, it will also establish rates for water supplied by Pacific Gas and Electric Company to the cities of Auburn, Rocklin, Lincoln, and Roseville, the towns of Newcastle and Loomis, and to the Southern Pacific Company.

Public hearings in this case were held in Auburn on October 13, 1914, and February 5, 1915, and in San Francisco on March 18, 19, 20, 30 and 31; May 12 and August 10, 11 and 20, 1915. Briefs have been filed and the case is now ready for decision.

This case vitally affects the welfare of both eastern Placer County and Pacific Gas and Electric Company. The matter of rates charged by a public utility is always one of importance. Far more important, however, in this case is the question whether any additional lands in eastern Placer County may be irrigated from the irrigation system of Pacific Gas and Electric Company. If the position taken by Pacific Gas and Electric Company at the hearings, to the effect that it can not be compelled to supply water to a single additional acre of land in eastern Placer County, is sound, it follows that thousands of acres of land suitable for the production of deciduous fruits must lie untilled and that the further development of one of the most desirable fruit growing sections of California must be thwarted. On the other hand, if Pacific Gas and Electric Company is to be denied the right to use for the purpose of generating hydroelectric energy, the additional waters impounded and to be impounded in Lake Spaulding, the company will find itself seriously crippled in a project on which it has already expended several million dollars. By reason of the importance of this case both to eastern Placer County and to Pacific Gas and Electric Company, it has received the most careful and thorough consideration from the Commission.

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The area referred to by complainants as the irrigable area of eastern Placer County lies between the Bear and the American rivers, Colfax on the north and Rocklin on the south.

The irrigation of deciduous fruits in this territory started about the year 1880, at which time the canals and ditches of the predecessors of Pacific Gas and Electric Company, which theretofore had been used almost exclusively for mining purposes, were used for the first time for irrigation to any appreciable extent. The irrigation of lands in this territory has developed until in the year 1914, 17,466 acres of land were irrigated by Pacific Gas and Electric Company in this territory. To irrigate this area, Pacific Gas and Electric Company supplied at the land 2,697.25 miner's inches of water. Pacific Gas and Electric Company also supplied 320 miner's inches, continuous flow, for the use of cities and towns in this district, and 40 miner's inches, continuous flow, for the use of the Southern Pacific Company.

Of the 17,466 acres of land thus irrigated by Pacific Gas and Electric Company in Placer County in 1914, 669 acres were situated between the contours of Colfax and proposed Power House No. 4 of Pacific Gas and Electric Company, located near Clipper Gap; 6,050 acres were irrigated between the contours of proposed Power House No. 4 and proposed Power House No. 5 of Pacific Gas and Electric Company, to be located near Auburn; and 10,670 acres were irrigated between the contours of proposed Power House No. 5 and proposed Power House No. 6, to be located near Newcastle. The average duty of each miner's inch of water sold in this territory has been slightly in excess of six acres of deciduous fruit.

The average increase in the acreage in Placer County irrigated from the irrigation system of Pacific Gas and Electric Company between the years 1907 and 1914 has been 200.43 miner's inches, or about 1,200 acres per year.

Complainants presented testimony to show that there is a large area of land in this general territory in eastern Placer County which desires water for the irrigation of deciduous fruit, alfalfa and clover; that many persons have bought tracts of land, clearing off portions thereof from time to time and expecting ultimately to irrigate the entire tract and that many have now brought a portion of their lands under irrigation and are desirous of irrigating the remaining portions of their land; and that if Pacific Gas and Electric Company is permitted to carry out its policy, announced in 1914, that no additional lands will be irrigated until the additional waters stored by the company have passed through the proposed Power House No. 6, all additional developments in the irrigable area of eastern Placer County hereinbefore referred to must necessarily cease. In support of their position, complainants filed as Exhibit No. 2 a statement of landowners in eastern Placer County

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who desire additional water for 1916 and 1917. Not all persons using water from the irrigation system of Pacific Gas and Electric Company were interviewed. Applying to the entire number of users the ratio of increased use ascertained from the users who were interviewed, complainants conclude that 294 miner's inches of additional water will be required for 1916, and 956½ miner's inches of further additional water for the year 1917. Complainants presented no evidence as to the location of the lands of the various persons whose names appear on this exhibit or of the expense necessary to be incurred by Pacific Gas and Electric Company in enlarging its existing irrigation canals and ditches and possibly constructing new irrigation canals and ditches to serve the lands referred to in Exhibit No. 2. The persons whose names appear in complainants' Exhibit No. 2 were not present for cross-examination, so that the Commission is unable to say whether the amount of water claimed to be necessary for the irrigation of additional acreage in 1916 and 1917 will actually be required. As already indicated, the average use of additional water for the years 1907 to 1914 was 200.43 miner's inches per year.

Complainants introduced evidence showing that the acreage of land not now irrigated but capable of profitable irrigation in the three areas hereinbefore set forth is as follows:

Between Colfax and Power House No. 4	9,150 acres
Between Power House No. 4 and Power House No. 5	7,260 acres
Between Power House No. 5 and Power House No. 6	13,590 acres
Total	30,000 acres

As already indicated, in the area between Colfax and the contour of proposed Power House No. 4, in which territory water has been available for irrigation longer than in the other territories within the irrigable area, only 669 acres were irrigated in 1914. As far as I can ascertain from the evidence, there is little demand at the present time for additional water in this area. In area No. 2, between the contours of proposed Power House No. 4 and proposed Power House No. 5, 6,050 acres are now irrigated and an additional 7,260 acres is capable of irrigation. The evidence shows a substantial demand for increased water in this area, but nowhere nearly to the extent to which the demand exists in area No. 3. In area No. 3, between the contours of proposed Power House No. 5 and proposed Power House No. 6, 10,670 acres are now under irrigation and 13,590 acres of additional land is irrigable. There is a large demand for additional water in this area. This entire demand could be supplied if a tunnel were constructed to divert the water after it has passed through proposed Power House No. 5.

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Before the construction of the present dam at Lake Spaulding, the capacity of the lake was 5,440 acre-feet; at present, with the new dam at a height of 225 feet, the capacity of the lake is 43,500 acre-feet; when the new dam has been raised to its ultimate height of 305 feet, the capacity of the lake will be 93,000 acre-feet. Pacific Gas and Electric Company earnestly insisted at the trial that the additional waters stored by the erection of the new dam at Lake Spaulding are the private property of the Pacific Gas and Electric Company and that it has not dedicated any thereof for irrigation in eastern Placer County. The company asserted, however, that when this water has passed through Power Houses Nos. 1 to 6, inclusive, the water would be sold for irrigation purposes in western Placer County or elsewhere.

In reply to the position of Pacific Gas and Electric Company in the matter of dedication, complainants referred to certain statements, oral and written, made by representatives of Pacific Gas and Electric Company, at various times, to the people of eastern Placer County, from which statements complainants urge that the people of eastern Placer County were entirely justified in concluding that it was the intention of Pacific Gas and Electric Company to supply, from its additional storage, water for the irrigation of additional lands in eastern Placer County as well as in western Placer County. For reasons which will hereinafter appear, it becomes unnecessary herein to decide this disputed question.

Representatives from Lincoln, Sheridan, Roseville, and other sections of western Placer County, appeared before the Commission at one of its hearings in Auburn, and suggested that there was a contest for the additional water impounded by Pacific Gas and Electric Company between eastern Placer County and western Placer County, and urged that the complaint be dismissed and that Pacific Gas and Electric Company be permitted to take its entire additional water through its proposed Power Houses Nos. 4, 5 and 6, past the lands in eastern Placer County, so that its entire additional water might be used for the irrigation of western Placer County, where practically no irrigation has hitherto been practised.

I can say, without hesitation, that as I view the evidence, there is no necessary conflict between the interests of eastern Placer County and western Placer County. Bearing in mind the facts that it has taken over thirty years to bring 17,466 acres of land under irrigation in eastern Placer County, that an immense supply of additional water, variously estimated at between ten and eleven thousand miner's inches, will be impounded by Pacific Gas and Electric Company when the dam at Lake Spaulding has been completed to a height of 305 feet, that each miner's inch of water at the land will irrigate slightly over six acres, and that

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a very large amount of water will be available after having passed through proposed Power House No. 5 or proposed Power House No. 6, for irrigation in western Placer County, I am convinced that even though water be supplied for the irrigation of additional acreage in eastern Placer County, there will be enough water available for the irrigation of western Placer County to take care of the needs of that territory for many years to come. Hence, I conclude that the only real conflict of interests in this case is between Pacific Gas and Electric Company, desiring to use the entire additional water for the generation of hydroelectric energy through its Power Houses Nos. 1 to 6, inclusive, and the people of eastern Placer County desiring to use a relatively small portion of the additional water for the irrigation of additional lands.

It is in the public interest that the people both of eastern and western Placer County should receive the water necessary for the irrigation of additional acreage. It is likewise in the public interest that the rights of Pacific Gas and Electric Company to any additional waters impounded and to be impounded by that company be clearly established. I am convinced that justice lies somewhere between the extreme claims of these two parties.

After careful consideration, I have reached the conclusion that it would be fair to Pacific Gas and Electric Company if this company is permitted to use the additional water impounded and to be impounded by the company for passage through its Power Houses Nos. 1 to 5, inclusive, with the exceptions hereinafter noted, leaving the matter of the construction of the proposed Power House No. 6 in abeyance, to be hereafter again considered in case Pacific Gas and Electric Company should conclude that the generation of electric energy in this proposed power house would be economical and that the company desires, notwithstanding the use of water for additional irrigation, as hereinafter specified, to construct said power house. In my opinion, it would be fair to the irrigationists if Pacific Gas and Electric Company agreed to hold itself in readiness to supply an additional two second feet, or 80 miner's inches, for the irrigation of lands between the contours of Colfax and proposed Power House No. 4; an additional 15 second feet, or 600 miner's inches, in the territory between the contours of proposed Power House No. 4 and proposed Power House No. 5; and such water as may be necessary for the irrigation of additional lands below the contour of Power House No. 5. Such water should be delivered by Pacific Gas and Electric Company at its regular rates and on such terms with reference to the construction of laterals as may be fair and reasonable. As already indicated, there will be an abundance of additional water for western Placer County.

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This solution of the problem has been presented to Pacific Gas and Electric Company, which company has agreed to waive such legal rights as it may have in the premises and has, by written stipulation on file herein, accepted the plan. The result of the acceptance of this plan by Pacific Gas and Electric Company and of the order of the Commission herein will be to meet all the reasonable requirements of the irrigationists of Placer County, while at the same time definitely defining the uses to which Pacific Gas and Electric Company can devote the additional waters impounded and to be impounded, under its present plans, by the company.

Complainants have also asked this Commission to establish a fair and reasonable rate to be charged by Pacific Gas and Electric Company for water sold for irrigation. The rate which has been in effect for many years, under which eastern Placer County has developed to its present condition, has been $45.00 per miner's inch. Considerable testimony was introduced both by complainants and by defendant and by the Commission's hydraulic engineers, bearing upon the elements which must be considered in establishing a reasonable rate. The ditches and canals of Pacific Gas and Electric Company used in distributing water for irrigation in eastern Placer County were running practically to their capacity in the year 1914. When water is supplied for the irrigation of additional acreage, as herein provided for, it will be necessary for Pacific Gas and Electric Company to incur considerable expenditure for the enlargement of existing canals and ditches and the possible construction of new canals and ditches. There is no evidence as to the amount of additional expenditure which will thus be incurred or of the additional charges for maintenance, operation and depreciation. In view of these conditions and of the conclusion herein reached with reference to the supply of additional water for irrigation, I shall recommend that that portion of the complaint herein which refers to the rates shall be dismissed. If, after Pacific Gas and Electric Company has made the necessary improvements to enable it to supply the additional water required for irrigation in eastern Placer County, and after the existing rates have had a fair trial under these altered conditions, the consumers of water for irrigation in eastern Placer County desire again to present to the Commission the question of rates, a new complaint may be filed at that time.

There is evidence to show that the tubes conveying water from the ditches and canals of Pacific Gas and Electric Company to the laterals are frequently interfered with, if not completely choked up with moss, twigs, fruit and other debris. The attention of Pacific Gas and Electric Company has been drawn to this situation and the company will be expected to provide such means as are reasonably adequate to remedy this condition.

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I submit the following form of order:

ORDER.

The above entitled proceeding having been submitted and being now ready for decision,

It is hereby ordered as follows:

1. In accordance with written stipulation of Pacific Gas and Electric Company on file herein, Pacific Gas and Electric Company is hereby directed to supply, on demand therefor, water for the irrigation of additional lands in the irrigable area in eastern Placer County, as described in the opinion herein, as follows:

(*a*) For lands between Colfax and the contour of proposed Power House No. 4—2 second feet (80 miner's inches).

(*b*) For lands between the contours of proposed Power House No. 4 and proposed Power House No. 5—15 second feet (600 miner's inches).

(*c*) For lands below the contour of proposed Power House No. 5, such water as may be necessary.

Said additional water shall be supplied at the established rates of Pacific Gas and Electric Company, and on such terms with reference to extensions of laterals as may be just and reasonable. If the parties can not agree, the matter may be referred to the Railroad Commission for decision, as provided in this Commission's Decision No. 2879 in Case No. 683.

2. In all other respects the above entitled complaint is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 24th day of December, 1915.

DECISION No. 3006.

IN THE MATTER OF THE APPLICATION OF J. M. HAMPTON, JR., FOR AN ORDER AUTHORIZING AN INCREASE IN THE RATES OF STORAGE ON GRAIN IN LIVE OAK, SUTTER COUNTY.

Application No. 1986.

Decided December 28, 1915.

Applicant at present charges a rate of 50 cents per ton to January 1st and 75 cents per ton per season for the storage of grain. This rate it contends is non-compensatory and petitions for permission to increase same, and it appearing

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that such request is reasonable, a rate of 75 cents per ton for first two months, $1.00 per ton per season established to become effective June 1, 1916, provided that this rate shall include all charges for weighing, piling, resacking, etc.

J. M. Hampton, Jr., in propria persona.

REPORT OF THE COMMISSION.

This is an application by J. M. Hampton, Jr., for permission to increase the rates for the storage of grain in the warehouses known as the Live Oak Warehouses in Live Oak, Sutter County.

The warehouses are generally designated as No. 1 and No. 2. Warehouse No. 1 consists of a main building of approximately 40 by 300 feet together with a wing of approximately 40 by 160 feet, the wing being used exclusively for the storage of hay. Warehouse No. 2 is approximately 85 by 130 feet; the walls of both warehouses being about 12 feet in height. Both buildings are constructed throughout of wood and are at least thirty-four years old. Comparatively recently the roof of Warehouse No. 1 has been about three-quarters, and the roof of Warehouse No. 2 has been about one-quarter covered with corrugated iron; and it is the intention of the owner in time so to cover the whole of each roof. The buildings are located upon land adjoining the right of way of the Southern Pacific Company, and are served by a regular industrial siding. Applicant holds a one-year lease from the Southern Pacific Company of the land upon which each warehouse is situated, at a total annual rental of $19.

According to the testimony it appears that early in 1914 applicant acquired the warehouses from his father at the price of $5.000.00, $2,000.00 of which he paid in cash, the balance being still due and owing. The rates at present charged by applicant for storage are as follows:

Hay: $1.25 per ton per season.
Beans: $0.50 per ton for the first month.
1.00 per ton per season.
Grain: $0.50 per ton to January 1st.
.75 per ton per season.
The season in every case runs from June 1st to May 31st.

According to applicant's testimony the gross receipts of the warehouse company for the year 1914 were $1,030.00, and for the year 1915 he estimated that they would be approximately $1,500.00. Applicant further testified that his operating expenses for the last mentioned year would be approximately as follows:

Salary of himself as manager	$1,200 00
Extra help	400 00
Insurance	60 00
Repairs	300 00
Taxes	35 00
Rent	19 00
Total	$2,014 00

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Applicant testified that he works at the warehouse, on the average, not less than ten hours per day, and that he works as a warehouse laborer as well as manager and bookkeeper. Under the circumstances he estimated that his services were worth $100.00 per month; but we find that he is also conducting an insurance business and operating a small rolling mill upon the premises and while these may take only a small portion of his time we feel that $75.00 per month is a liberal amount to allow him for his services to the warehouse business. This would make the total maintenance and operating expenses approximately $1,700.00 per year, without making any allowance for interest upon the investment. We feel that applicant is not entitled to any allowance for depreciation owing to the large amount devoted to repairs each year on account of the extreme age of the buildings.

While this Commission has in one or two other cases fixed storage rates for grain at 90 cents per ton per season, we feel that owing to the comparatively small amount of grain handled by applicant, and his comparatively heavy fixed charges that he should be allowed to charge $1.00 per ton. According to the evidence, applicant is giving first-class service to his customers and although all of them were notified of the hearing not one appeared to protest against the proposed increase.

The question was raised at the hearing as to whether extra sacks for resacking should be supplied by the owner or by applicant. In almost all cases we have established rates upon the basis of the warehouseman doing the resacking and furnishing the necessary sacks at his own expense and we see no reason for departing from the rule in this instance. Very little resacking is necessary unless the grain is allowed to remain in storage for more than one season, in which case the additional charge for the storage, without the corresponding additional cost of handling the grain, has been estimated to be sufficient to pay for any sacks required. Applicant has not asked for any increase in his storage rates for hay, beans, or any other commodity and these will consequently not be affected by this order.

ORDER.

J. M. Hampton, Jr., having applied to the Railroad Commission for an order authorizing an increase in the rates for the storage of grain in his warehouses at Live Oak, Sutter County, and a public hearing having been held upon said application and said application having been submitted and being now ready for decision, the Commission hereby finds as a fact that the existing rates on grain are noncompensatory and unreasonable and that the rates hereinafter authorized are just and reasonable rates to be charged by said applicant.

Basing its conclusions upon the foregoing findings of fact and upon the other findings which are contained in the opinion which precedes this order,

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It is hereby ordered that applicant be and he is hereby, authorized to charge and collect the following rates for the storage of grain, viz:

$0.75 per ton for the first two months;
$1.00 per ton for the season, from June 1st to May 31st.

It is further ordered that the collection of these rates shall be conditioned upon the rendering of first-class service as heretofore given, such as receiving, weighing, piling, carrying in storage and such other service as it is customary for warehousemen similarly situated to give and in addition thereto all necessary resacking, including the furnishing of sacks or otherwise placing of grain in proper condition for shipment.

It is further ordered that the rates herein authorized shall become effective upon grain for the season commencing June 1, 1916, provided that applicant shall within sixty (60) days from the date of this order file with the Railroad Commission a schedule in duplicate showing the rates herein authorized, and all other rates charged for other commodities stored by him.

Dated at San Francisco, California, this 28th day of December, 1915.

DECISION No. 3007.

E. E. JOHNSON ET AL.

vs.

WESTERN EMPIRE SUBURBAN FARMS ASSOCIATION.

Case No. 482.

Decided December 28, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

Complainants having heretofore requested dismissal of the above entitled case and on December 27th made written request therefor to the Commission, and no affirmative relief being asked by the answer, but only that the complaint be dismissed,

It is hereby ordered that the same be and it is hereby dismissed.

Dated at San Francisco, California, this 28th day of December, 1915.

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Decision No. 3008.

IN THE MATTER OF THE APPLICATION OF SWEETWATER WATER COMPANY FOR AN ORDER AUTHORIZING IT TO PUT INTO EFFECT THE SAME SCHEDULE OF RATES, AND THEREAFTER TO COLLECT THE SAME RENTALS, TOLLS AND CHARGES FOR WATER IN THE TERRITORY WITHIN THE MUNICIPALITIES OF NATIONAL CITY AND CHULA VISTA, SAN DIEGO COUNTY, AS IT HAS BEEN AUTHORIZED BY DECISION NO. 2802 IN APPLICATION NO. 312, TO PUT INTO EFFECT IN THE UNINCORPORATED TERRITORY UNDER APPLICANT'S WATER SYSTEM.

Application No. 1942.

Decided December 29, 1915.

Report of the Commission.

Sweetwater Water Company having applied to the Railroad Commission for an order authorizing and permitting the company to put into effect within the municipalities of National City and Chula Vista, San Diego County, the same schedule of rates as the company has been authorized and empowered by Decision No. 2802, rendered on October 2, 1915, in Application No. 312, to place in effect in the unincorporated territory under applicant's water system; and

Whereas the rates to be paid for fire hydrant rental in the cities of National City and Chula Vista were not at issue in Application No. 312; and

Whereas it appears that the existing rate of $2.50 per month per fire hydrant is excessive and that Sweetwater Water Company has agreed to a reduction of said rate to $2.00 per fire hydrant per month, on condition that the rates heretofore established by this Commission in Application No. 312, to be charged by SweetwaterWater Company in unincorporated territory, shall in other respects be likewise established as the rates to be charged by Sweetwater Water Company in the municipalities of National City and Chula Vista,

It is hereby ordered that Sweetwater Water Company be and the same is hereby authorized to charge within the municipalities of National City and Chula Vista, the following rates:

For 400 cubic feet or less, per month, $1.00.
The next 1,600 cubic feet, 15 cents per 100 cubic feet.
All use for irrigation purposes above 2,000 cubic feet, 2 cents per 100 cubic feet.
All use other than irrigation above 2,000 cubic feet, 7½ cents per 100 cubic feet.
Fire hydrant rental, $2.00 per fire hydrant per month, with a minimum of $144.00 per month to be paid by the city of National City and $10.00 per month to be paid by the city of Chula Vista.
Meters to be installed at the option of either the company or the consumer.
Meters and service connections to be installed at the expense of the company.

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The foregoing rates shall become effective in the cities of National City and Chula Vista on January 1, 1916.

Within ten days from the receipt of a certified copy of this order, Sweetwater Water Company shall file with the Railroad Commission its written acceptance of the rates herein established.

Dated at San Francisco, California, this 29th day of December, 1915.

DECISION NO. 3009.

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN POWER COMPANY OF CALIFORNIA FOR PERMISSION TO ISSUE CAPITAL STOCK AND DEBENTURES AND FOR APPROVAL OF A CERTAIN FINANCIAL PLAN.

Application No. 1999.

Decided December 29, 1915.

The Commission heretofore authorized applicant, among other things, to issue $5,000,000.00 debentures, provided that the purposes for which the proceeds were to be used was first approved by the Commission. Accordingly, applicant files a supplemental application for permission to use the proceeds as follows: $3,000,000.00 to purchase $4,998,000.00 par value of stock of the City Electric Company, $1,500,000.00 for the construction of a transmission line from Big Bend to Oakland, $150,000.00 for the construction of a third cable, and $100,000.00 for the construction of a fourth cable under San Francisco Bay.

Held, application granted, provided that the sum paid for such stock shall not be taken before this Commission or any other rate fixing body as representing in any way the value of the property transferred or any equity therein; also that Great Western Power Company file with the Commission a stipulation to the effect that no part of the $3,000,000.00 received in exchange for stock of the City Electric Company shall be expended for any purpose whatsoever unless such action is first approved by the Commission.

Guy C. Earl and *Chaffee E. Hall*, for Applicant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

In the above entitled proceeding, Great Western Power Company of California has filed a supplemental application asking the Railroad Commission to make its order authorizing the expenditure by Great Western Power Company of California of the proceeds of the debentures authorized by the decision of December 20, 1915, in the above entitled proceeding, for the following purposes:

1. To purchase $4,998,000, par value, of common capital stock of City Electric Company	$3,000,000
2. To construct a transmission line from Big Bend to Oakland	1,500,000
3. To construct a 3d cable across the bay of San Francisco	150,000
4. To construct a 4th cable across the bay of San Francisco	100,000

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A public hearing on this supplemental application was held in San Francisco on December 28, 1915.

In its decision dated December 20, 1915, in the above entitled proceeding, the Railroad Commission authorized Great Western Power Company of California to issue its ten-year 6 per cent convertible gold debentures of the total face value of $5,000,000.00, to be dated November 1, 1915, and payable November 1, 1925, at not less than 91 per cent of the face value thereof, plus accrued interest. The purpose of this supplemental application is to secure an order from the Railroad Commission specifying the purposes for which the proceeds from the sale of said debentures may be used.

City Electric Company was incorporated on January 14, 1907, under the laws of California. The company has an authorized issue of 50,000 shares of common capital stock of the par value of $100.00 per share. The entire authorized capital stock is issued and outstanding. The minutes of the board of directors of City Electric Company of January 18, 1907, show that 49,910 shares of the capital stock of City Electric Company, being the entire authorized capital stock, with the exception of 90 shares, were to be issued to A. J. Hechtman in connection with a contract entered into on January 18, 1907, between City Electric Company and A. J. Hechtman. In this contract, according to the minutes, Hechtman agreed to supply and equip one generating station for City Electric Company in San Francisco and to construct five miles of distributing system in accordance with the contract specifications. Mr. Hechtman also guaranteed the sale of 500 5 per cent thirty-year gold bonds of the City Electric Company, each having a face value of $1,000.00, at not less than the sum of $850.00 per bond. City Electric Company agreed to pay to Mr. Hechtman $500,000.00 in installments, and also to issue to him said 49,910 shares of City Electric Company's capital stock. There is no evidence to show what tangible value, if any, said capital stock represented at the time of its issue.

City Electric Company has authorized an issue of first mortgage 5 per cent thirty-year gold bonds of the total face value of $5,000,000.00, these bonds being dated July 1, 1907, and payable on July 1, 1937. Of the bonds so authorized, City Electric Company's annual report for the year ending December 31, 1914, on file with this Commission, shows that $2,512,000.00, face value, were outstanding. Of the bonds thus outstanding, bonds of the face value of $533,000.00 were pledged as collateral. Bonds of the face value of $62,000.00 were purchased by the company and retired through its sinking fund prior to December 31, 1914.

The testimony herein shows that in 1911, Great Western Power Company purchased the capital stock of City Electric Company (except 30

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shares), and that $80.00 per share was paid by Great Western Power Company for this stock. The purchase was effected through the instrumentality of a syndicate. As part of this transaction, Great Western Power Company delivered to Western Power Company (of New Jersey), the holding company, bonds of Great Western Power Company of the face value of $3,000,000.00, common capital stock of Great Western Power Company of the par value of $2,500,000.00, and $150,000.00, or thereabouts, in cash. Great Western Power Company also guaranteed the payment of dividends on $1,000,000.00, par value, of preferred stock of California Electric Generating Company, a subsidiary corporation. Western Power Company (of New Jersey) then delivered to the syndicate managers the $3,000,000.00, face value, of bonds of Great Western Power Company and the $1,000,000.00, par value, of preferred stock of California Electric Generating Company, and also common stock of Western Power Company (of New Jersey) of the par value of $2,670,000.00. The syndicate managers, on their part, agreed to pay for said securities an amount equivalent to $80.00 per shares of the common capital stock of City Electric Company, except the 30 shares which were not acquired, together with interest on deferred payments.

The following table shows the comparative income and profit and loss account of City Electric Company for the years ending December 31, 1910, 1911, 1912, 1913, and 1914, as reported to the Railroad Commission by City Electric Company:

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Comparative Income and Profit and Loss Statement of City Electric Company for Years Ending December 31, 1910, 1911, 1912, 1913 and 1914.

Item	1910	1911	1912	1913	1914
Income statement:					
Operating revenue	$917,766 17	$932,259 23	$974,571 61	$1,018,981 27	$1,074,080 50
Operating expenses	518,050 34	552,770 32	[2]573,040 67	[2]596,555 59	[2]796,842 24
Net operating revenue	$399,715 33	$379,488 91	$401,530 94	$422,425 68	$277,238 26
Other income	4,490 61	[4]266 33	6,092 89	49,003 55	53,072 15
Gross corporate	$404,205 94	$379,222 58	$407,623 83	$471,429 23	$330,310 41
Deductions:					
Bond interest	$85,000 00	$85,000 00	$86,583 07	$99,218 05	$100,214 16
Other interest			3,219 82	36,795 83	36,000 00
Liability reserve	10,000 00				
Rent				3,212 40	3,041 66
Insurance	10,000 00				
Sinking fund			12,870 00		
Bad debts	3,407 91	4,658 13		2,493 78	2,649 46
Amortization of debt, discount, etc.	10,268 87	10,268 87			2,086 71
Total deductions	$118,676 78	$99,927 00	$102,672 89	$141,720 06	$143,991 99
To profit and loss	285,529 16	279,295 58	304,950 94	329,709 17	186,318 42
Profit and loss statement:					
Surplus beginning of year	$246,116 66	$366,645 82	[1]$611,716 88	$860,892 34	$724,530 62
Add income for year	285,529 16	279,295 58	304,950 94	329,709 17	186,318 42
Miscellaneous			7,885 32	10,248 82	448,336 44
Totals	$531,645 82	$645,941 40	$924,553 14	$1,200,850 33	$1,359,185 48
Deductions:					
Dividends	$165,000 00	$90,000 00			
Sinking funds				25,585 00	25,275 00
Miscellaneous			63,660 80	8,886 31	43,293 09
Appropriation to reserve				[3]441,848 40	
Total deductions	$165,000 00	$90,000 00	$63,660 80	$476,319 71	$68,568 09
Surplus close of year	366,645 82	555,941 40	860,892 34	724,530 62	1,290,617 39

[1]Balance sheet shows surplus of $555,941.40. [2]Does not include depreciation. [3]This amount set up on books of company to show amount of surplus invested in fixed capital. Entry reversed in 1914. [4]Loss.

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Attention should be drawn to the fact that while the operating revenue for 1914, being $1,074,080.50, is only $55,099.23 in excess of the operating revenue for 1913, the operating expenses for 1914, being $796,842.24, are $200,486.65 in excess of the operating expenses for 1913, which were reported to be $596,555.59. In explanation of this very large increase in operating expenses, at a time during which there was a much smaller increase in operating revenue, the representatives of applicant herein stated at the hearing that the increase was due to the purchase by City Electric Company of the major portion of its electric energy in the year 1914 from Great Western Power Company at the price of one cent per kilowatt hour, in accordance with contract dated February 28, 1912, between Great Western Power Company, City Electric Company, Mortimer Fleishhacker, Herbert Fleishhacker and California Electric Generating Company. Applicant explains that City Electric Company can produce electric energy in its own steam generating plant in San Francisco at a cost considerably less than the price paid to Great Western Power Company, but that the matter is in reality a family affair and that the cost to Great Western Power Company of electric energy delivered to City Electric Company is somewhat less than the cost to City Electric Company of generating electric energy in its steam plant in San Francisco. The net result of this arrangement is, of course, to increase the operating expenses of City Electric Company over what they would be if the company generated electric energy in its own steam plant, to decrease the apparent net income of City Electric Company and to increase the gross revenue and the net income of Great Western Power Company.

When Great Western Power Company receives from Great Western Power Company of California, the applicant herein, the sum of $3,000,000.00 which is to be paid by Great Western Power Company of California for said $4,998,000.00, par value, of capital stock of City Electric Company, said $3,000,000.00 must, under the terms of the deed of trust or mortgage of Great Western Power Company, pass to the trustee under said deed of trust. At the request of Great Western Power Company, the trustee may permit said Great Western Power Company to use the $3,000,000.00 to pay and retire its bonds or to pay for the cost of extensions, additions and betterments to the plant of said Great Western Power Company. Applicant herein has filed its Exhibit "D" showing in general the purposes for which Great Western Power Company desires to expend said $3,000,000.00. Great Western Power Company desires, in general, to expend said money for the construction of additions and extensions to its properties in this State, and there is no present desire to use said money for the purpose of retiring bonds.

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In his testimony at the hearing in the original application herein, Mr. Mortimer Fleishhacker, president of Great Western Power Company of California, stated that the payment by Great Western Power Company of California of $3,000,000.00 to Great Western Power Company for said capital stock of City Electric Company is in reality merely a family transaction in furtherance of the general plan for consolidation of the properties of the Great Western Power System. He drew attention to the fact that this Commission, if it so desires, can as readily control the expenditure of the proceeds of $3,000,000.00 in the treasury of Great Western Power Company as though this money remained in the treasury of Great Western Power Company of California. No valuation of the property of City Electric Company has been filed, and I am unable to make a finding as to the value of the property of City Electric Company.

I recommend that this portion of the application be granted, on condition that the sum of $3,000,000.00 be not taken before this Commission or any other public authority as representing for rate making, sale, issue of securities, or any other purpose, the value of the property of City Electric Company or of any equity therein, and also that Great Western Power Company of California will secure from Great Western Power Company and file herein a stipulation authorized by its directors, to the effect that it will expend said $3,000,000.00 only upon securing an order from the Railroad Commission, in the same manner as though said $3,000,000.00 had been secured by Great Western Power Company from the issue of its own securities, authorized by the Railroad Commission.

Applicant presented testimony to the effect that it is necessary for the purposes of Great Western Power System that a second transmission line be constructed from Big Bend to Oakland, at an approximate cost of $1,500,000.00, and that a third and a fourth cable be constructed across San Francisco Bay, from Alameda County to San Francisco, at an approximate cost of $150,000.00 for the third cable and $100,000.00 for the fourth cable. This property is to belong to Great Western Power Company of California, the applicant herein. No definite arrangements have as yet been made for the operation of this property. No estimate of the cost of constructing said property has been filed.

I recommend that this portion of the application be also granted, on condition that applicant herein shall first file detailed estimates of the cost of said construction, whereupon the Commission will issue a supplemental order authorizing said expenditures.

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I submit the following form of order:

FIRST SUPPLEMENTAL ORDER.

A public hearing having been held on the supplemental application of Great Western Power Company of California herein, and the Railroad Commission finding that the purposes for which the proceeds from the sale of the debentures hereinbefore authorized are to be used are not in whole or in part reasonably chargeable to operating expenses or to income,

It is hereby ordered that Great Western Power Company of California may expend the proceeds from the sale of $5,000,000.00, face value, of ten-year 6 per cent convertible gold debentures, dated November 1, 1915, and payable November 1, 1925, the issue of which was authorized by this Commission's decision of December 20, 1915, in the above entitled proceeding, for the following purposes and on the following conditions and not otherwise, to wit:

1. Proceeds from the sale of said debentures not in excess of the sum of $3,000,000.00 may be used for the purchase of $4,998,000.00, par value, of the capital stock of City Electric Company.

2. Proceeds from the sale of said debentures not in excess of the sum of $1,500,000.00 may be used for the construction of a second transmission line from Big Bend to Oakland.

3. Proceeds from the sale of said debentures not to exceed the sum of $150,000.00 may be used for the construction of a third cable across San Francisco Bay, from Alameda County to San Francisco.

4. Proceeds from the sale of said debentures not to exceed the sum of $100,000.00 may be used for the construction of a fourth cable across San Francisco Bay, from Alameda County to San Francisco.

The authority hereby granted is given only subject to the following conditions:

(1) The price at which the capital stock of City Electric Company is being purchased by Great Western Power Company of California, namely, the sum of $3,000,000.00, shall not be used before the Railroad Commission, or any other public authority, as representing for rate making, sale, issue of securities, or any other purpose, the present value of the property of City Electric Company or of any equity therein.

(2) Great Western Power Company of California, before using any portion of the proceeds from the sale of said debentures for the purpose of purchasing capital stock of City Electric Company, shall first have secured from the Railroad Commission a supplemental order reciting that Great Western Power Company has filed with the Railroad Commission a stipulation satisfactory in form, agreeing that it will expend said $3,000,000.00 to be received from the sale of said capital stock of

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City Electric Company, only after having secured from the Railroad Commission an order or orders authorizing the expenditure of said money, in the same manner as though said $3,000,000.00 had come to the treasury of Great Western Power Company from the issue of securities of Great Western Power Company authorized by the Railroad Commission.

(3) Great Western Power Company of California shall not expend any portion of the proceeds from the sale of said debentures for the construction of the transmission line from Big Bend to Oakland, the third bay cable and the fourth bay cable until said company has filed with the Railroad Commission a detailed estimate of cost of construction and shall have received from the Railroad Commission a supplemental order authorizing the expenditure of moneys for said purposes.

All the provisions of this Commission's order of December 20, 1915, in the above entitled proceeding, except in so far as modified by this first supplemental order, shall remain in full force and effect.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 29th day of December, 1915.

DECISION NO. 3010.

IN THE MATTER OF THE APPLICATION OF FRESNO INTERURBAN RAILWAY COMPANY FOR AUTHORITY TO ISSUE STOCKS AND BONDS.

Application No. 1416.

Decided December 30, 1915.

Applicant, having under construction an electric railroad out of the city of Fresno, was heretofore authorized to issue $212,500.00 par value of common stock, $350,000.00 par value of first mortgage bonds and $350,000.00 par value preferred stock, the preferred stock to be used to retire the bonds. Not desiring to issue the preferred stock, it applies for permission to issue in lieu thereof, certificates of indebtedness of an aggregate sum of $350,000.00.

Held, Application granted, provided that applicant first submit for the approval of the Commission the form of contract for the sale of such certificates and the form of receipt to be issued for partial payments thereon, also that applicant provide that such certificates become a lien upon its property subject to first mortgage bonds and furnish a copy of this decision to each person called upon to sign any agreement in connection with the purchase of such certificates.

C. C. Whittemore and *J. B. Rogers*, for Applicant.

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REPORT OF THE COMMISSION.

LOVELAND, *Commissioner.*

FIRST SUPPLEMENTAL OPINION.

This Commission by Decision No. 1957, dated November 23, 1914 (Vol. 5, Opinions and Orders of the Railroad Commission of California, page 749), authorized applicant herein, subject to the conditions specified in said decision, to issue $212,500.00 par value of common stock at not less than $80.00 per share; $350,000.00 face value of first mortgage twenty-five year 6 per cent bonds at not less than 80 per cent of the face value, and $350,000.00 par value of 6 per cent cumulative preferred stock at par, the proceeds obtained from the sale of said preferred stock to be used to retire said $350,000.00 face value of bonds.

Applicant was authorized to issue its stocks and bonds to secure funds to construct a line of railway from Fresno to "Centerville Citrus District," with a branch to "Clovis," and another branch to what is known as the "Gould Colony," embracing a total mileage of twenty-six miles. Applicant estimates that it can construct its railway on a basis of $17,300.00 per mile, or for a total of $449,800.00.

Applicant desires to use the $350,000.00 par value of preferred stock to retire a like amount of bonds. The preferred stock it proposed to sell only to landowners along the line of its proposed railway.

In brief, the agreement between applicant herein and the subscribers for preferred stock provides that 10 per cent of the subscription price is to be paid within thirty days after the railway has been completed to or opposite the property of the subscriber for preferred stock. The remaining 90 per cent of the subscription price is to be paid on or before ten years after the aforesaid payment of 10 per cent, with interest at the rate of 6 per cent per annum, from the date of said 10 per cent payment. The unpaid portions of the subscription price are secured by a lien on the real estate of the subscribers. All the payments, under the agreement, shall be made to Mercantile Trust Company of San Francisco, trustee. The money thus paid to the trustee shall be used to pay the principal and interest on the $350,000.00 face value of bonds which the company proposes to issue. The preferred stock is not to be issued until fully paid. Each purchaser of preferred stock shall have issued to him a receipt for each $100.00 paid by such purchaser on the purchase price of the stock for which he has subscribed. The receipt shall recite the fact of such payment and shall provide that the amount represented by said receipt will be preferred as to dividends to the amount of 6 per cent per annum from the earnings of the company, after payment of operating expenses, sinking fund installments and interest on bonds.

The subscribers for preferred stock agree to make all payments, together with interest thereon, within ninety days after due. Upon

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failure to do so, the entire balance unpaid shall become due and payable. To recover the same, the agreement authorizes the company to bring an action in the Superior Court of Fresno County to collect any unpaid subscription and enforce the lien upon the property of the subscriber. The agreement for the sale of preferred stock further provides that it shall not be in force and effect, or binding on the company or the subscribers, until the subscription for the entire amount of $350,000.00 of said preferred stock have been obtained. Within ninety days after subscriptions have been secured for said $350,000.00 of preferred stock, the company agrees to begin the construction of the railroad and have the same completed within one year.

The authority granted by said Decision No. 1957 applied only to such stocks and bonds as applicant might issue prior to November 15, 1915. Applicant now reports that it has issued none of its common stock or bonds. It has obtained some subscriptions for preferred stock. These subscriptions were secured under representation that no stockholder's liability would attach to the purchasers of preferred stock. Since securing the subscriptions, applicant has been informed that under the laws of this State, the purchasers of preferred stock may be subject to a stockholder's liability. Because of this liability, applicant proposes to modify its financial plan as hereinafter indicated.

While now applicant requests that it be permitted to issue its common stock and bonds heretofore authorized at any time on or before May 15, 1916, it does not desire to issue its preferred stock. It now asks authority to execute a new agreement providing for the issue of preferred certificates of indebtedness. The certificates shall provide that any surplus remaining from the operation of the road after the payment of operating expenses, sinking fund installments, interest on bonds and other fixed charges, shall be used as follows:

First—For the payment of 6 per cent interest on all moneys paid by the landowners who sign the proposed new agreement.

Second—For the payment of an amount to the landowners who sign the proposed new agreement, equal to the interest due the company from said landowners on unpaid subscriptions.

Third—For the payment and cancellation of bonds.

Fourth—For the payment and cancellation of the certificates of indebtedness.

In my judgment the phrase "certificates of indebtedness" describes more accurately the nature of the commercial paper which applicant desires to issue. I, therefore, suggest that applicant do not use the term "preferred" in connection with the certificates of indebtedness herein authorized. Moreover, I am of the opinion that applicant may use its surplus earnings, if any, as above indicated, without an order from this Commission.

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Applicant has not submitted a copy of the proposed agreement which the landowners, who wish to aid in financing the railway enterprise, are to sign. It reports that the terms and conditions of said proposed agreement will be similar to the terms and conditions of the agreement under which it has solicited subscriptions for preferred stock. This suggests the consideration of another matter. The financial plan heretofore approved, provided for the issue of common and preferred stock and bonds. The money obtained from the purchasers of preferred stock was to have been used to pay off bonded indebtedness. The stockholders of a company are the owners of the property of the corporation. They have a proprietary interest. While they are subject to a stockholder's liability, any assets remaining after the payment of the indebtedness belongs to them. In this instance, the proprietary interest of the preferred stockholders was limited to the par value of the stock and the dividends thereon. Under the plan now proposed, the landowners, who contribute toward the financing of the road, are to be given certificates of indebtedness bearing 6 per cent interest. The certificates are to be issued for an indefinite term. Both the principal and interest are to be paid out of surplus earnings. Thus, in brief, the landowner, instead of having a proprietary interest in the railway, is to become an unsecured creditor of the company. The company, however, is to have a lien on the property of the landowner, who becomes a party to the new agreement, said lien to be for the unpaid subscriptions. Of course, if the landowners, who expect to be benefited by the construction of the proposed line of railway, desire to aid in its financing, this Commission will not restrict them from so doing. I do not desire to cast unnecessary doubt upon this promotion enterprise. But as a matter of fact, this Commission has no information at hand from which it can ascertain whether or not the surplus earnings of Fresno Interurban Railway will be sufficient to pay the principal of and the interest on the certificates of indebtedness which applicant now proposes to issue. In order that the attitude of this Commission may not be misinterpreted, applicant will be required to furnish a copy of this decision to each landowner before he is called upon to sign any agreement relating to the issue of certificates of indebtedness.

Because of the essential difference between a certificate of preferred stock and a certificate of indebtedness, it will be necessary for applicant to submit to this Commission for approval a copy of the proposed agreement which it expects the landowners to sign. Applicant shall also submit a copy of the proposed certificate of indebtedness which it desires to issue. I am of the opinion that the certificate of indebtedness should be in such form as to render it negotiable. I suggest further that they be issued for a term not exceeding fifteen years, and that they be made

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a lien on the property of the company, subject to the lien of the first mortgage bonds.

I herewith submit the following form of order:

ORDER.

Fresno Interurban Railway Company having requested this Commission to amend the order found in Decision No. 1957 (Vol. 5, Opinions and Orders of the Railroad Commission of California, page 749),

And good cause appearing, the Railroad Commission hereby amends said order found in Decision No. 1957 so as to read as follows:

It is hereby further ordered that Fresno Interurban Railway Company be given authority, and it is hereby given authority, to issue 2,125 shares of the par value of $100.00 per share of common capital stock, or a total par value of $212,500.00 in lieu of a like amount of stock authorized by Decision No. 1957, dated November 23, 1914.

It is hereby further ordered that Fresno Interurban Railway Company be given authority, and it is hereby given authority, to issue $350,000.00 of its first mortgage 6 per cent twenty-five year bonds in lieu of a like amount of bonds authorized by Decision No. 1957, dated November 23, 1914.

It is hereby further ordered that Fresno Interurban Railway Company be given authority, and it is hereby given authority, to issue certificates of indebtedness bearing 6 per cent interest per annum, in the aggregate sum of $350,000.00.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The common stock herein authorized to be issued shall be sold so as to net applicant not less than $80.00 per share.

(2) The bonds herein authorized to be issued shall be sold so as to net applicant not less than 90 per cent of the face value thereof plus accrued interest.

(3) The certificates of indebtedness herein authorized to be issued shall be sold so as to net applicant not less than the face value thereof.

(4) The common stock and bonds herein authorized to be issued shall be used for the purpose of refunding share for share and bond for bond 580 shares of common stock and $110,000.00 of bonds heretofore authorized by this Commission in Application No. 1084, to be issued by this applicant. The proceeds from the balance of said common stock and said bonds shall be used only as shall hereafter be directed by this Commission.

(5) Three hundred fifty thousand dollars face value of certificates of indebtedness herein authorized shall be used only for the purpose of refunding the $350,000.00 face value of applicant's bonds herein

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authorized, in such manner as shall be hereafter approved by this Commission.

(6) The authority herein granted is conditioned upon the submission by the applicant to this Commission and the approval thereof by this Commission of—

(*a*) Applicant's mortgage and deed of trust securing its bonds.

(*b*) The form of contract for the sale of certificates of indebtedness herein authorized. Said contract to provide that the moneys obtained through the sale of the certificates of indebtedness will be used to pay applicant's bonded indebtedness.

(*c*) The form of receipt to be issued by applicant for partial payments for its certificates of indebtedness.

(7) None of the stock and none of the bonds herein authorized to be issued shall be issued until this Commission shall have issued a supplemental order finding that the applicant herein has complied with all the conditions enumerated in this order.

(8) The authority herein granted shall apply only to such bonds and to such stock as shall have been issued on or before May 15, 1916.

(9) A copy of this decision shall be furnished to each and every landowner before he is called upon to sign any agreement relating to the issue of certificates of indebtedness herein authorized.

(10) The authority herein given is conditioned upon the payment of the fee prescribed under the Public Utilities Act.

The foregoing first supplemental opinion and order are hereby approved and ordered filed as the first supplemental opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1915.

DECISION NO. 3011.

IN THE MATTER OF THE APPLICATION OF GEORGE P. ALEXANDER FOR PERMISSION TO BUILD AND MAINTAIN FARM TELEPHONE LINES AND PARTY TELEPHONE LINES IN THE DISTRICT OF ORANGEVALE, SACRAMENTO COUNTY, CALIFORNIA.

Application No. 1926.

Decided December 30, 1915.

REPORT OF THE COMMISSION.

ORDER OF DISMISSAL.

The applicant in the above entitled proceeding having petitioned the Commission for permission to withdraw this application,

It is hereby ordered that the application herein be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 30th day of December, 1915.

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DECISION NO. 3012.

IN THE MATTER OF THE APPLICATION OF THE CITY OF SAN FERNANDO FOR PERMISSION TO CONSTRUCT A PUBLIC STREET AT GRADE OVER THE TRACKS OF SOUTHERN PACIFIC COMPANY IN SAN FERNANDO, LOS ANGELES COUNTY, CALIFORNIA.

Application No. 1975.

Decided December 30, 1915.

Applicant applies for permission to open what is known as Jessie street across the tracks of Southern Pacific Company at grade, and it appearing that such crossing is necessary to public convenience, application granted, provided that a certain temporary crossing directly southeast of the proposed crossing be closed, and that an automatic flagman be installed at the expense of applicant.

Frederick Baker, for Applicant.

George D. Squires, for Southern Pacific Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed with the Commission on November 24, 1915, and looks to the opening of Jessie street, San Fernando, over the tracks of Southern Pacific Company. A hearing was held in this matter on December 21, 1915, at San Fernando.

A brief discussion of the grade crossing situation in this city seems desirable before the merits of this application are considered. The main line of the Southern Pacific Company runs through the city in a northwesterly and southeasterly direction and divides the city so about two-thirds of its population of 2,000 people are north of the track and one-third south. Its streets are generally laid out parallel with the railroad or at right angles to it. As stated in the application, there are but two crossings over the track recognized as being public crossings. The first of these, Hubbard street, is near the northwesterly boundary of the city and the approach on one side is over private property. Maclay street, about in the center of the city, is the second of these two crossings, and is the main street across the track. It is paved and improved but the title of the crossing is in the railroad company and not in the city.

There is, however, no question about closing this street. About 660 feet southeasterly from Maclay street McFarland street on the north side of the track ends at the railroad reservation; south of the track and about in line with McFarland street Brand boulevard ends at the railroad right of way on that side of the track. The terminus of the

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Pacific Electric line from Los Angeles is on Brand boulevard at Porter avenue, a street parallel to the Southern Pacific Railroad and adjacent to its right of way at this point. A private crossing is open over the property of the railroad company, between these two streets, which is used considerably by the public and, except that it is not improved, is in effect a public road. About 820 feet southeasterly from this private road are Jessie street, north, and Wolfskill, south, of the railroad right of way and it is the intent of this application to join these two streets by extending Jessie street over the tracks to connect with Wolfskill. There is at the present time a temporary crossing a short distance southeasterly from the crossing now proposed.

Between Jessie street and McFarland street there is a high school building and the only connection between the two streets is a private thirty-foot road through the school grounds which is not convenient for travel between these streets because it was laid out to take travel from their ends, at the railroad right of way, to the buildings and it forms two sides of a triangle, the third side of which would be a direct road between McFarland and Jessie streets parallel with and adjacent to the Southern Pacific's right of way. There are no other cross streets between McFarland and Jessie except Fourth street, which forms the northerly terminus of Jessie street. The owners of property on Jessie street now desire to put in improvements by paving, installing lights and constructing sidewalks and they do not care to do so until that street has some connection with the rest of the city at or near where it joins the track.

It was suggested at the hearing that if Jessie street were opened across the track the private crossing between McFarland street and Brand boulevard could be closed, and this developed the fact that many residents of San Fernando believe that instead of closing this private crossing it should be made a public street. Several witnesses were of the opinion that a street in this location would better serve the public than would a public crossing at Jessie street.

There is no application before the Commission to construct a crossing at McFarland and it would be impossible now to determine whether a crossing is needed more there than at Jessie street, but from the testimony and from my own observation on the ground I am convinced that while one street should be opened in this part of the city there is no need for two at the present time and there probably will be no such need for some time to come. This would be more apparent, if, as suggested, a street were built parallel with and adjacent to the Southern Pacific's right of way between Jessie and McFarland streets. There are already several cross streets on the south side of the track and with such a cross street on the north side either the Jessie street crossing or

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the suggested McFarland street crossing would, I believe, amply serve the public and a second crossing in this vicinity would not be required.

I have already stated that it appears to me to be reasonable that a street should be opened in this vicinity. The need for such a street should be clear from the previous description of the streets now opened, the location of the school and the distribution of the population, and it seems unnecessary to discuss the need of the crossing further.

At the site of this proposed crossing, in addition to the main line track, and a spur track, there are two switches, protected with derailing devices, which will have to be moved to permit of a crossing being made. The cost of this work has been estimated to be about $300.00 and there seems to be no reason why the Commission should not follow its usual custom and require the city to stand this expense as well as the expense of automatic flagman crossing protection, the need for which seems to be beyond dispute.

The temporary crossing now used to connect Jessie and Wolfskill streets should be closed and the usual conditions will be covered in the following form of order, which I recommend:

ORDER.

City of San Fernando, having applied to the Commission to construct a public street at grade across the tracks of Southern Pacific Company, and a public hearing having been held, and it appearing to the Commission that for the reasons given in the foregoing opinion this application should be granted subject to certain conditions,

It is hereby ordered that the city of San Fernando be and the same hereby is granted permission to construct Jessie street at grade across the tracks of Southern Pacific Company at the place and in the manner shown by the map attached to the application; said crossing to be constructed subject to the following conditions, and not otherwise, viz:

(1) The crossing shall be constructed of a width of not less than twenty-four (24) feet, with grades of approach not exceeding four (4) per cent, and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(2) The entire expense of constructing the crossing, including the removal of the two switches hereinbefore mentioned, shall be borne by applicant.

(3) The cost of maintaining this crossing thereafter in good and first-class condition shall be borne by the applicant to a point within two (2) feet of the rails of Southern Pacific Company. The cost of maintaining the crossing thereafter between the rails and to a point two (2) feet outside thereof shall be borne by Southern Pacific Company.

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(4) For the protection of this crossing there shall be installed a first-class automatic flagman of a type approved by the Commission. The cost of this installation shall be borne by applicant, and the cost of its maintenance thereafter in first-class operating condition shall be borne by Southern Pacific Company.

(5) The present temporary crossing now used, southeast of the proposed crossing, shall be legally closed and abandoned as a public highway crossing.

(6) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem to be right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 30th day of December, 1915.

DECISION No. 3013.

IN THE MATTER OF THE APPLICATION OF WESTERN STATES GAS AND ELECTRIC COMPANY FOR AN ORDER AUTHORIZING THE ISSUE OF BONDS OF THE FACE VALUE OF TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS, AND NOTES OF THE FACE VALUE OF THIRTY-THREE THOUSAND DOLLARS.

Application No. 1731.

Decided December 30, 1915.

REPORT OF THE COMMISSION.

SEVENTH SUPPLEMENTAL ORDER.

Whereas, this Commission by Decision No. 2776, dated August 31, 1915, authorized the delivery to Western States Gas and Electric Company of $182,000.00 face value of bonds, the issue of which was authorized by Decision No. 2550, dated June 30, 1915, provided said Western States Gas and Electric Company deposit with the trustee, Girard Trust Company, the sum of $182,000.00 in cash, said $182,000.00 so deposited with the trustee to be withdrawn by applicant herein from time to time in accordance with the order of this Commission permitting the withdrawal; and

Whereas, applicant on December 23, 1915, filed a statement showing that it has expended from November 1, 1915, to November 30, 1915,

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both dates inclusive, the sum of $20,523.37 for extensions, additions and betterments; and

Whereas, applicant asks for authority to withdraw from the aforesaid fund of $182,000.00 on deposit with the trustee the sum of $20,523.37; and good cause appearing,

It is hereby ordered that Western States Gas and Electric Company be given and it is hereby given authority to withdraw from Girard Trust Company, trustee, the sum of $20,523.37, said $20,523.37 being a portion of the fund deposited with the trustee in accordance with Decision No. 2726, dated August 31, 1915, of the Railroad Commission of the State of California.

It is hereby further ordered that Decision No. 2550, dated June 30, 1915, as amended by supplemental orders, shall remain in full force and effect, except as the same may be modified by this seventh supplemental order.

Dated at San Francisco, California, this 30th day of December, 1915.

Decisions Nos. 3014, 3015, 3016, grade crossings; not printed. See end of volume.

DECISION NO. 3017.

IN THE MATTER OF THE APPLICATION OF THE LA HABRA DOMESTIC WATER COMPANY FOR AN INCREASE OF RATES TO BE CHARGED FOR ITS WATER SOLD THE PUBLIC.

Application No. 1856.

Decided December 30, 1915.

Applicant, operating a small water system in the town of La Habra, applies for permission to increase its water rates sufficient to cover cost, in one year, of installing meters for all consumers. As the installation of meter is a capital charge such application can not be granted, though it appears that an increase in the present rates is warranted, in connection with which, the Commission directs that applicant discontinue present discriminatory practices in making allowances to consumers owning stock. The following schedule is established to become effective February 15, 1916, provided applicant has metered its system by that time: $1.50 per month for first 600 cubic feet, 20 cents per 100 cubic feet for next 400 per month, 15 cents per 100 cubic feet for all in excess of 1,000 cubic feet per month.

Albert Launer, for Applicant.

REPORT OF THE COMMISSION.

La Habra Domestic Water Company by this application seeks authority to establish the increased schedule of rates shown herein.

Applicant was incorporated about three years ago with a capital stock of $20,000.00, divided into 400 shares of the par value of $50.00 each, of

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which fifty-five shares have been issued, all sold at par. It is engaged in purchasing and distributing water for domestic uses to the inhabitants of La Habra, in Orange County. It has never paid any dividends. It has no bonded indebtedness nor any liens upon its property. It is indebted in the sum of $1,870.00 for money borrowed at the bank and about $300.00 on open account.

It purchases water at present from the Whittier Water Company at the rate of 5 cents per one hundred cubic feet, which is the same rate charged by said Whittier Water Company to its other water users.

Applicant owns 15 shares of the capital stock of the La Habra Water Company, a mutual organization for distributing water pumped from the San Gabriel River and conveyed in pipes to La Habra, where it is distributed ratably to its stockholders in proportion to their stock holdings and used generally for irrigation purposes. Each 10 shares of stock under the by-laws of said company entitles each user to 30 inches of water for a continuous flow of twenty-four hours once a month. Applicant, owning 15 shares of such stock, would be entitled to a flow of 30 miner's inches for thirty-six hours once a month. Its president expressed the opinion that arrangements could probably be made to take half the quantity of water twice a month, if suitable arrangements can be made for its storage. Applicant is not able to use any of its stock in the La Habra Water Company for the reason that it owns no storage facilities, and the demands of its customers require daily continuous service. The water represented by this stock is at present used by the Whittier Water Company under an arrangement with applicant effective June 1, 1915, by which Whittier Water Company pays the maintenance assessments levied by La Habra Water Company, which assessments usually amount to $20.00 per year per share, but which last year, because of an extra assessment, amounted to $337.50 upon the 15 shares. Applicant has made no effort to procure a better disposition of the use of its said water, and expresses the opinion that a better disposition can not now be made, as there is at present no sale for such stock, and but a limited market for it. Sales have been made at prices ranging from $125.00 to $175.00 during the last two years. These 15 shares were purchased by applicant at various times at prices averaging $135.00 per share.

Applicant has 106 users and 30 stockholders. It charges a flat rate of $1.50 per month to those who are not stockholders, and to stockholders $1.00 per month. It pays to its stockholders as "rental" 50 cents per share per month in cash, or credits the accruing "rental" upon their water bills. Under its practice one share of stock entitles the holder to receive water at the $1.00 rate. Each stockholder "renting" stock to

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the company is therefore receiving from the company 12 per cent per annum upon an investment of $50.00 per share.

Some arrangement should, if possible, be made by applicant through which it may cease giving the use of its water represented by stock in La Habra Water Company with no return upon its investment, and at the same time allowing its stockholders 12 per cent upon their investments. The practice of paying stockholders 50 cents per month per share as rental seems to have originated from the erroneous idea that applicant's stockholders should be treated like those of a purely mutual organization, although its water is distributed at discriminatory flat rates to its stockholders and others, and not in proportion to its shares of stock. Applicant is organized as a private corporation for profit.

Applicant's property consists principally of a system of distributing pipes for conveying water taken originally from the pipes of La Habra Water Company and since about June 1st, last, from the pipes of Whittier Water Company. Applicant submitted at the hearing an inventory and appraisement of materials, but not including the cost of labor of installation. Its records are not sufficiently complete to enable a determination to be made as to the exact original cost of its system. From such records as are available and a careful examination by Mr. H. F. Clark, one of the assistant hydraulic engineers of the Commission, the following estimate of cost, new, of applicant's property, including therein a suitable allowance for overhead expense which was not actually incurred, and including property and labor donated, has been made:

Water stock	$2,030
Pipe system	5,616
Valves	359
Meters	184
Services	481
Office records	50
Franchise	80
Total	$8,800

La Habra is a new community apparently growing rapidly. It seems probable that new services will be frequently added. The estimated revenue from the present 106 services, based on the rates provided in the order, is as follows:

From 106 services at the minimum of $1.50, 600 cubic feet for 12 months	$1,908
Excess estimated at 100 cubic feet for 6 months at 20 cents	127
Total	$2,035

Estimated maintenance and operation expense, including allowance for a new salary to cover superintendence, with cost of water based upon

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the consumption of the past year with an unmetered service, and including annuity to cover depreciation, is as follows:

Annuity	$116 87
Water purchased	635 00
Repairs	100 00
Taxes	47 19
Office supplies	18 65
Clerk	120 00
Auditor	10 00
Superintendence	480 00
Total	$1,527 71

Applicant requests authority to establish rates for metered service of $2.50 minimum for the first 6,000 gallons and 10 cents per 100 cubic feet for excess and 4 cents per 100 gallons for water sold in tank loads, that it may raise from its water users in the rates of one year enough to pay for metering its system, beside taking care of the usual cost of maintenance and operation. This course can not be approved. The cost of installing meters is a capital charge. Applicant has received offers from a reliable meter company to install meters for it and receive pay therefor by monthly payments. The discrimination in rates between stockholders and other consumers should be removed. Returns to stockholders upon their investment should come through dividends earned rather than through a discrimination in rates, or the practice above referred to of allowing "rentals."

The use of water for the past year has been about 1,000 cubic feet per service per month. Similar communities using metered service usually consume an average of from 600 to 700 cubic feet per month. Apparently metering the system will reduce applicant's bill for water from 30 to 40 per cent, and fully justify such a course. It can be financed by borrowing money temporarily or investing its earnings or by better utilizing its stock in the La Habra Water Company. Applicant is not under any expense for superintendence at present and such expense, while properly allowed for in the rates, need not be actually incurred for some time. It is hoped the growth of the community and the advantages of metered service will in time justify a lower rate, while affording stockholders an ample return.

After a careful consideration of the evidence produced at the public hearing at La Habra, we have concluded to authorize the rates set forth in the following order:

ORDER.

La Habra Domestic Water Company having applied to this Commission for authority to increase its rates for water served to the inhabitants of La Habra, and a public hearing having been held thereon, and the matter being now ready for decision,

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The Commission hereby finds as a fact that the following are just and reasonable rates for applicant to charge for water served to the inhabitants of La Habra for water for domestic use at the present time:

$1.50 per month for the first 600 cubic feet.
.20 per 100 cubic feet for the next 400 cubic feet per month.
.15 per 100 cubic feet for all over 1,000 cubic feet used per month.

Applicant is hereby authorized to put the above described rates into effect on or before February 15, 1916, and directed to install before that time a meter upon each of its services upon its system.

Dated at San Francisco, California, this 30th day of December, 1915.

DECISION No. 3018.

IN THE MATTER OF THE APPLICATION OF SOUTH LOS ANGELES WATER COMPANY (1) FOR AN ORDER AUTHORIZING THE SALE OF ALL OF ITS PROPERTY TO THE SOUTH LOS ANGELES LAND AND WATER COMPANY; AND (2) FOR AN ORDER AUTHORIZING THE SOUTH LOS ANGELES WATER COMPANY TO ACQUIRE ONE THOUSAND SEVEN HUNDRED SHARES OF THE CAPITAL STOCK AND ONE HUNDRED THOUSAND DOLLARS OF FIRST MORTGAGE BONDS OF THE SOUTH LOS ANGELES LAND AND WATER COMPANY; AND (3) FOR AN ORDER AUTHORIZING THE SOUTH LOS ANGELES LAND AND WATER COMPANY TO PURCHASE THE PROPERTY OF THE SOUTH LOS ANGELES WATER COMPANY.

Application No. 1430.

Decided December 31, 1915.

REPORT OF THE COMMISSION.

SECOND SUPPLEMENTAL ORDER.

Whereas, this Commission by Decision No. 2178, dated February 27, 1915 (Vol. 6, Opinion and Orders of the Railroad Commission of California, page 226), authorized South Los Angeles Water Company to sell its water system to South Los Angeles Land and Water Company for $75,000.00 par value of stock and $75,000.00 face value of 6 per cent bonds; and

Whereas, the order found in said Decision No. 2178 provides that it shall not become effective until this Commission has issued a supplemental order approving the deed and contract of transfer, nor until South Los Angeles Land and Water Company shall, in form satisfactory to this Commission, stipulate that it will undertake all obligations of service now properly binding upon South Los Angeles Water Company; and

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Whereas, South Los Angeles Water Company has filed for approval a copy of a "Grant Deed," dated February 7, 1915, conveying its property to South Los Angeles Land and Water Company, said deed having been marked Exhibit No. 2; and

Whereas, applicants have filed an agreement, dated December 7, 1915, marked Exhibit No. 3, in which South Los Angeles Land and Water Company agrees to assume all existing contracts of whatever kind or nature, which have been entered into by South Los Angeles Water Company prior to the execution of the agreement in connection with the production, sale or distribution of water for domestic or irrigation purposes; and good cause appearing,

It is hereby ordered that South Los Angeles Water Company be given, and hereby is given, authority to execute a "Grant Deed" in the same form and tenor as the "Grant Deed," marked Exhibit No. 2 and attached to the application herein—said "Grant Deed" granting to South Los Angeles Land and Water Company the following property:

> "Lots thirty-one (31) to forty (40), inclusive, in block "C" and lots six (6), seven (7), eight (8), ten (10), eleven (11), twelve (12) and thirteen (13), in block "D" of the Nadeau Vineyard tract No. 1, as per map recorded in book 28, page 21, Miscellaneous Records of said county.
>
> Lot fifty-nine (59), block two of the Aldine Square tract, county of Los Angeles, State of California, as per map recorded in book 29, page 11, Miscellaneous Records of said county.
>
> Together with all rights of way, franchises, buildings, wells, pumping machinery, towers and tanks, distributing system, meters, service connections, hydrants and all other property of any kind or nature situate on or appurtenant to said above described real property."

The Railroad Commission hereby finds as a fact for the purpose of this proceeding: that South Los Angeles Land and Water Company has complied with the third condition of the order found in Decision No. 2178, dated February 27, 1915, by filing the agreement dated December 7, 1915, marked Exhibit No. 3, and attached to the application herein.

Dated at San Francisco, California, this 31st day of December, 1915.

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DECISION NO. 3019.

J. H. MILLER AND E. DONALDSON, PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF MILLER & DONALDSON.

vs.

WILMINGTON TRANSPORTATION COMPANY.

Case No. 381.

Decided December 31, 1915.

Complainants, doing a general merchandising business in the town of Avalon, attack the rates of defendant company, operating a transportation business handling freight and passengers between the ports of San Pedro and Avalon, contending that such rates are exorbitant and unjust.

The town of Avalon is run mainly as a resort, defendant having an agreement with the company operating such resort to pay to it annually 80 per cent of its net profits toward the maintenance thereof, the traffic to and from this resort being its main source of revenue. Complainants contend that the payment of this sum is *ultra vires* and in any event excessive.

***Held*, After review of the operating revenues and expenses of defendant: That its present revenues permit of merely a reasonable return upon the value of its properties. That a transportation company has the right to devote such portions of its earnings as it may deem necessary, to the maintenance of its business. That in the present case defendant is merely paying the Catalina Island Company, acting as its agent, annual sums to be used in the advertising, maintenance and building up of a field for its transportation business. That a review of the Island company's revenues show that, including the amounts which it receives from defendant, it does not earn more than a small return upon its investment.**

***Held*, That the present rates of defendant are just and reasonable, complaint dismissed.**

Karl Ratzer and *L. S. Kemper*, for Complainants.

Gibson, Dunn & Crutcher, for Defendant.

REPORT OF THE COMMISSION.

THELEN, *Commissioner.*

The issue in this proceeding is the reasonableness of the rates charged by Wilmington Transportation Company for transportation of persons and property between San Pedro and the town of Avalon on Santa Catalina Island.

The complaint alleges, in effect, that the complainants are merchants engaged in the business of selling groceries, meats, hardware and provisions at Avalon, Santa Catalina Island, Los Angeles County; that defendant is a common carrier of persons and property between the port of San Pedro and the port of Avalon; that the distance from the port of San Pedro to the port of Avalon is about 27 miles; that the

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defendant is the only common carrier of persons or freight whose vessels ply between said two ports; that the rate charged by defendant for the transportation of persons between San Pedro and Avalon is $2.25 per round trip and $1.50 each way; that the rates for certain classes of freight are as specified in the complaint; that the rates charged by defendant for the transportation of passengers and freight are unjust and unreasonable; that the complainants are and for more than four years have been shippers of freight by means of the vessels operated by defendant; that the average paid by complainants to defendant has amounted to about $2,500.00 during each of the last four years, and that by reason of excessive freight rates charged by defendant, complainants have been damaged in the sum of $1,000.00 per year; and that the rate of $2.25 per round trip and $1.50 per single trip for passengers transported by defendant between San Pedro and Avalon is excessive and unreasonable, prevents a multitude of persons from visiting Avalon and thus deprives complainants of profits which otherwise would accrue to them. Complainants ask that the Railroad Commission reduce the defendant's passenger and freight rates to a just and reasonable basis.

Subsequent to the filing of the complaint herein, defendant filed its motion to dismiss the complaint on the ground that the Railroad Commission does not have jurisdiction over the subject matter of the complaint. Defendant took the position that the vessels of defendant plying between San Pedro and Avalon are engaged in commerce with foreign nations by reason of the fact that they sail beyond the three-mile limit, and that jurisdiction over the rates charged by said vessels is hence vested exclusively in the federal government. After a public hearing on said motion, the Railroad Commission on July 9, 1913, made its order denying the motion to dismiss and directing defendant to satisfy the complaint or to answer it (Vol. 3, Opinions and Orders of the Railroad Commission of California, p. 42). On December 29, 1913, this decision was sustained by the Supreme Court of California on review proceeding initiated by the defendant: *Wilmington Transportation Company* vs. *Railroad Commission,* 166 Cal. 741. On February 1, 1915, the decision of the Supreme Court of California was sustained by the Supreme Court of the United States: *Wilmington Transportation Company* vs. *Railroad Commission,* U. S. Adv. Ops. 1914, p. 276. The effect of these proceedings has been to establish clearly the jurisdiction of the Railroad Commission of California over the rates of vessels plying regularly between California ports, and not touching at the ports of other states or nations, even though the vessels, in sailing from California port to port traverse the high seas beyond the three-mile limit throughout a portion of their voyage.

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On February 26, 1915, the defendant filed its answer. The answer denies that the rates charged by defendant for the transportation of either passengers or freight are unjust or unreasonable; avers that defendant in addition to the passenger rates set out in the complaint also maintains and charges a fare of $2.00 for the round trip sold either on Saturday or Sunday and limited to the following Monday, as well as a party fare for regularly organized parties of thirty or more, limited to two days from the date of sale, at the rate of $2.00 for the round trip; alleges that the complaint is in error with reference to certain of the freight rates therein specified; and denies that the complainants have been damaged. Defendant further answers that the island of Santa Catalina, outside of the town of Avalon, is practically uninhabited and that no business is carried on thereon except farming of about 200 acres of land; that 95 per cent of the area included within the corporate limits of Avalon, exclusive of streets, and the entire territory of the island of Santa Catalina, outside of Avalon, is the property of Santa Catalina Island Company; that the capital stock of Santa Catalina Island Company is owned and held by the same persons and in the same proportions as the capital stock of Wilmington Transportation Company; that the island of Santa Catalina and the town of Avalon have been for many years a pleasure and health resort and that the transportation business of Wilmington Transportation Company arises directly or indirectly from and is dependent upon the maintenance of such pleasure and health resort in such a manner as to attract considerable numbers of persons thereto; that the larger portion of the travel to Santa Catalina Island is in the summer months of each year; that in order to maintain said island and town as an attractive pleasure and health resort, large sums of money must be expended in furnishing the means of public entertainment, attractions and amusement, in improving and maintaining roads, streets and parks, in providing and maintaining adequate supplies of water and electricity and an adequate system of sewage and garbage disposal, and in policing and patroling beaches and other public places; that most of said expenses must be paid by private enterprise; that for many years last past, except the year 1914, these expenditures have been paid by Santa Catalina Island Company, which company has been reimbursed by Wilmington Transportation Company from the proceeds of the latter company's transportation business; that unless such expenditures are thus reimbursed out of the proceeds of the transportation business of Wilmington Transportation Company, the island and town can not be maintained as an attractive resort and the entire business dependent thereon, including the transportation business of Wilmington Transportation Company, will cease to be profitable and ultimately must be discontinued; that the moneys which have heretofore been expended or will hereafter be expended by Wilmington

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Transportation Company for the maintenance of the island and town, as hereinbefore stated, are not excessive or more than is reasonably necessary for the purpose; that the rates of Wilmington Transportation Company are not excessive or unreasonable and that the total net profit derived therefrom, after providing for the aforesaid expenditures necessary for the maintenance of the island and town as a resort, have not exceeded a fair return upon the capital actually and necessarily invested; and that if the rates of Wilmington Transportation Company should be reduced it would be impossible to provide the necessary expenditures for the maintenance of the island and town as a resort and that Wilmington Transportation Company's revenues would accordingly be still further reduced. Defendant asks that the complaint be dismissed.

A petition in intervention was thereafter filed by the Freeholders' Improvement Association of Avalon. The petition alleges, in effect, that petitioner, hereinafter referred to as the association, is a California corporation organized for the purpose of providing for entertainment at Avalon for the members of the association, their patrons and guests; that 90 per cent of the property owners of Avalon and 90 per cent of the shippers of Avalon are members of the association; that the business of the association and its members depends upon the maintenance of Avalon as a high-class pleasure resort; that except during the year 1914, a contract has been in existence between the association and Santa Catalina Island Company, under the terms of which contract Santa Catalina Island Company expended a large sum of money in furnishing, for the benefit of the citizens of Avalon, their patrons and guests, bands, dancing pavilions, and other forms of attractions, amusement and public entertainment, in maintaining adequate supplies of water and electricity, in providing for the disposition of sewage and garbage and in furnishing police and fire protection; that Santa Catalina Island Company has been reimbursed by Wilmington Transportation Company for the sums thus paid by Santa Catalina Island Company; that the expenditure of such sums is necessary in order that the town of Avalon may be maintained as a high-class pleasure resort; that in the year 1914, no such contract was in effect between the association and Santa Catalina Island Company, with the result that Santa Catalina Island Company did not make the expenditures which it had theretofore made, as a consequence thereof, the public entertainments, amusements and attractions were not provided, the streets were not properly maintained, and the city was not maintained as a high-class pleasure resort, by reason whereof the number of persons visiting Avalon was so greatly diminished that the merchants and business men of Avalon suffered severe financial losses; that in order to remedy this condition, a contract in general similar to the contract theretofore in effect was negotiated in January, 1915,

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between the association and the Santa Catalina Island Company, but that Santa Catalina Island Company would not adhere to such a contract unless it were certain of being reimbursed for its expenditures by Wilmington Transportation Company; that on February 1, 1915, the Supreme Court of the United States rendered its decision in the case of *Wilmington Transportation Company* vs. *Railroad Commission, supra,* holding that the Railroad Commission has jurisdiction over the rates charged by Wilmington Transportation Company, and that Santa Catalina Island Company can not continue said contract in effect unless it is assured that Wilmington Transportation Company will be allowed rates sufficiently high to enable it to reimburse Santa Catalina Island Company for the expenditures to be incurred by the latter company, in accordance with the contract with the association; and that the association makes no complaint of either the passenger or freight rates charged by Wilmington Transportation Company but, on the contrary, avers that by reason of the unique and unusual situation of Avalon as a pleasure resort and the necessity of making the expenditures hereinbefore referred to for maintaining the island of Santa Catalina and the town of Avalon as a high-class pleasure resort, the rates of Wilmington Transportation Company are reasonable. Freeholders' Improvement Association of Avalon accordingly asks that the Railroad Commission establish such rates for the transportation of passengers and freight by Wilmington Transportation Company between San Pedro and Avalon as will enable Wilmington Transportation Company to furnish bands, dancing pavilions, amusements and attractions, to maintain, clean and light the streets of Avalon, to provide for sewage disposal, to provide parks and golf links, and otherwise to make the necessary expenditures to maintain Avalon as a high-class pleasure resort. The association further asks the Railroad Commission to find that the rates charged by Wilmington Transportation Company are just and reasonable rates as long as Wilmington Transportation Company continues to make the expenditures for the maintenance of the island of Catalina and the town of Avalon as a high-class pleasure resort.

On May 5, 1915, the complainants and defendant in the above entitled proceeding entered into a written stipulation to the effect that the trial of this case should be deferred until the first week in November, 1915. The parties stipulated that in case the Railroad Commission should reduce the freight rate charged by Wilmington Transportation Company, said company would refund to complainants and to all other shippers of freight the difference between the freight rate charged to such shippers and the rate as finally established by the Railroad Commission, from May 18, 1915, to the effective date of the rates thus to be established.

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A public hearing in this case was held in Los Angeles on November 3, 1915. Evidence was presented at this hearing in behalf of the complainants, the defendant, the intervener, and the Railroad Commission. Mr. J. L. Merkey, chairman of the board of trustees of Avalon, also presented a petition signed by most of the leading business men of Avalon, reading as follows:

> "We the undersigned business men and property owners of the city of Avalon, county of Los Angeles, State of California, do petition your honorable board that in considering the rates from the mainland to Santa Catalina Island, that you will take into consideration the dependence of Avalon on the support and protection granted by the Wilmington Transportation Company.
>
> We believe that it would be impossible for the taxpayers and citizens of Avalon to support the town as a high-class pleasure resort without receiving assistance from the Wilmington Transportation Company.
>
> We understand that the Santa Catalina Island Company's business is so interwoven with that of the Wilmington Transportation Company, that should the transportation company withdraw their support, the value of our property and business would undoubtedly depreciate."

In accordance with the request of the parties, permission was given to file briefs. The briefs have been filed and the case is now ready for decision.

For many years, Wilmington Transportation Company has been operating its vessels for the transportation of passengers and freight between the port of San Pedro and the port of Avalon, on Santa Catalina Island. This company is the only common carrier which has operated throughout the entire year from the mainland to the island of Santa Catalina.

The rate charged by Wilmington Transportation Company for the transportation of passengers is $2.25 per round trip between San Pedro and Avalon, and $1.50 for a single trip. The company also has in effect a rate of $2.00 per round trip, good from Saturday or Sunday to Monday, and a party fare rate of $2.00 per round trip, limited to two days from the date of sale, for regularly organized parties of thirty or more. The freight rates of Wilmington Transportation Company are based upon a rate of 20 cents per 100 pounds, with variations in said base rate generally dependent upon the floor space in the hold of the vessel necessary to accommodate the particular commodity.

Wilmington Transportation Company has at times been subject to competition during certain seasons of the year on the part of other vessels plying between San Pedro and Avalon or Long Beach and Avalon. These vessels have not undertaken to carry freight but have confined themselves to the transportation of passengers. During portions of the year 1913, two vessels operated by gasoline, the *Nellie* and

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the *San Diego*, competed with Wilmington Transportation Company in the transportation of passengers. Mr. A. C. Malone, owner of the *Nellie*, testified that there was not business for two vessels and that the *Nellie* dropped out on or about September 15, 1913. The *Nellie* started with a round trip fare of $1.00 in 1913, but reduced its fare to 50 cents and 60 cents when the *San Diego* commenced operations. The *San Diego* charged a round trip fare of $1.00, while the *Nellie* was charging 50 cents. The *Nellie* has a gross tonnage of 47.7 and has a length somewhat less than 60 feet. The vessel plies between Long Beach and Avalon, over a course of some 27½ nautical miles. Persons desiring to visit Santa Catalina from Los Angeles do so by going via either San Pedro or Long Beach.

During portions of the year 1914, the *Nellie* and the *San Diego* both operated. In 1915 the *Nellie* continued to run between Long Beach and Avalon. The rate charged in 1915 was $1.10 per round trip. A small boat known as the *Calypso* also ran during a portion of the year 1915, between San Pedro and Avalon. It follows that persons desiring to travel by common carrier between the mainland and Avalon have been able during the years 1913, 1914 and 1915, to travel in the smaller vessels herein referred to, at rates much lower than those charged by Wilmington Transportation Company for transportation in its larger and more commodious vessels.

In 1913, Avalon was incorporated as a city of the sixth class.

From 1909 to 1915, inclusive, except the year 1914, the expenses of maintaining Avalon as a pleasure resort, including expenditures such as taking care of the streets, policing the town and disposing of the sewage, which are ordinarily regarded as municipal functions, have been to a considerable extent paid by Santa Catalina Island Company, which company, in turn, was reimbursed by Wilmington Transportation Company from the revenue derived from the transportation of passengers and freight between San Pedro and Avalon.

At the hearing, the complainants introduced in evidence the freight rate schedules of a number of common carriers by water between San Francisco and certain points on San Francisco Bay and in the rivers tributary to San Francisco Bay. No evidence was introduced with reference to passenger rates or ocean going transportation of either passengers or freight. No evidence was introduced to show a similarity of conditions surrounding the transportation under the rates introduced in evidence, on San Francisco Bay, with the conditions governing the ocean going transportation between San Pedro and Avalon. The evidence along this line introduced by complainants is not of such a character as to be of assistance to the Commission in determining just and reasonable rates to be charged by Wilmington Transportation Company for the transportation of either passengers or freight.

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Comprehensive reports covering the value of the operative property, the maintenance and operating expenses and the allowances for depreciation in connection with the operation of Wilmington Transportation Company and a portion of the operations of Santa Catalina Island Company were prepared by the Railroad Commission's experts and were introduced in evidence in this proceeding.

I shall refer first to the Wilmington Transportation Company and then to Santa Catalina Island Company.

The following table shows the estimated reproduction cost new, the estimated annual depreciation and the estimated depreciated reproduction cost of the property of Wilmington Transportation Company, used and useful in connection with the Company's freight and passenger business between San Pedro and Avalon, as of June 30, 1915, as prepared and introduced in evidence by Mr. Paul Thelen, one of the Commission's engineers:

TABLE I.

Reproduction Cost, Annual Depreciation and Depreciated Reproduction Cost.

	Reproduction cost	Annual depreciation	Depreciated reproduction cost
Cabrillo	$207,593 72	$4,700 00	$155,893 72
Hermosa	90,337 87	2,950 00	51,987 87
Listo (tugboat)	9,712 51	860 00	7,992 51
Yard launch	780 00	40 00	460 00
Water barge	2,650 87	73 00	1,774 87
Extra equipment for vessels	8,974 82	500 00	5,974 82
Shop machinery and tools	12,544 64	501 79	8,459 48
Miscellaneous shop buildings	8,466 34	262 21	6,140 07
Docks and wharves	5,226 20	134 43	4,352 15
Stores and supplies	3,332 69		3,332 69
General office fixtures	861 50		861 50
Interest during construction	6,623 95		6,623 95
Administrative and general	7,500 00		7,500 00
Working cash capital	12,500 00		12,500 00
Grand totals	$377,105 11	$10,021 43	$273,853 63

NOTE.—The *Vivo* is considered in the same class as the *Warrior* and the *Custom House Lighter*, namely, not engaged in the business between San Pedro and Avalon. The *Listo* is included above on the assumption of one full tug to towage and one full tug to the Avalon business.

As will be noted, the estimated reproduction cost new of this property is $377,105.11, and the estimated depreciated reproduction cost based on the straight-line method, is $273,853.63. The estimated annual depreciation, similarly based on the straight-line method is $10,021.43. It becomes unnecessary in this proceeding to pass on the question of the method to be pursued in estimating depreciation, for the reason that the estimates prepared by this Commission's engineering department as

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well as the reports of its auditing department, have been accepted in full by Wilmington Transportation Company.

The following table shows the profit and loss account for the years ending December 31, 1911, 1912, 1913 and 1914, in connection with the operation of the vessels of Wilmington Transportation Company engaged in the public service, as reported by Mr. T. G. Hughes, one of the Railroad Commission's auditors, to be shown by the books of Wilmington Transportation Company, with the exception that the expenditures for the operation of Captain Banning's yacht have been eliminated:

TABLE II.

Profit and Loss Account for the Years Ending December 31, 1911, 1912, 1913 and 1914. Wilmington Transportation Company.

	1911	1912	1913	1914
Earnings	$274,731 68	$258,732 07	$237,688 42	$155,008 52
Expenses—				
Operating steamers	$55,977 12	$54,390 86	$54,812 53	$49,632 24
Repairs, Avalon wharf		214 98	495 14	3,440 63
General repairs	3,689 42	3,425 66	2,012 92	1,474 60
Handling freight, San Pedro	6,999 08	9,004 07	7,624 91	6,802 66
Handling freight, Avalon	1,908 74	3,292 94	2,974 15	1,874 88
Bar supplies	3,691 58	3,298 54	4,521 94	2,818 23
Shop and yard expense	1,054 32	498 24	957 14	545 11
Freight and express on material	404 95	502 10	149 78	297 27
Salaries—				
Manager and superintending engineers	6,600 00	6,600 00	6,600 00	6,600 00
Clerks, San Pedro and Avalon	1,422 15	2,484 95	2,422 50	2,664 70
Clerks, Los Angeles	3,962 50	3,780 00	3,315 00	3,285 00
Meals provided employees		2,998 15	2,829 44	2,150 50
Rent, San Pedro office				120 00
Stationery	622 85	375 32	614 03	504 27
Telephone	520 50	583 50	555 00	555 00
Taxes	6,825 95	4,997 09	4,879 39	6,197 32
Insurance	5,531 25	5,134 50	5,949 90	4,015 10
Franchises and licenses				275 00
Attorney fee				210 68
Loss and damage	136 41	260 14	561 97	238 76
Miscellaneous	162 00	928 77	510 32	
Total expenses	$99,508 82	$102,769 81	$101,786 06	$94,001 95
Profit before charging depreciation and expenses incurred by Santa Catalina Island Co.	$175,222 86	$155,962 26	$135,902 36	$61,006 57
Deduct expenses incurred by Santa Catalina Island Co.	39,984 51	54,783 81	39,751 48	16,301 42
Profit before charging depreciation	$135,238 35	$101,178 45	$96,150 88	$44,705 15

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The following table shows in detail the expenditures incurred by Santa Catalina Island Company and deducted in Table II:

TABLE III.

Expenditures Incurred by Santa Catalina Island Company and Reimbursed in Entirety by Wilmington Transportation Company.

	1911	1912	1913	1914
Advertising	$12,591 82	$21,900 87	$16,214 56	$13,851 24
Attractions—band	14,559 82	16,778 35	14,418 39	----------
Collecting and burning garbage on island	1,285 55	105 54	73 15	75 10
Maintenance of golf course	315 19	557 25	----------	----------
Police patrol	1,152 00	1,607 98	1,481 21	668 47
Maintenance of streets and lawns	10,080 13	13,821 62	7,564 17	1,706 61
Miscellaneous	----------	12 20	----------	----------
Totals	$39,984 51	$54,783 81	$39,751 48	$16,301 42

During the year 1914, during which year there was no contract in effect between the Freeholders Association and Santa Catalina Island Company, the expenditures of Santa Catalina Island Company were much smaller than those of preceding years. During this year, Santa Catalina Island Company did not supply a band, while the town of Avalon, incorporated in 1913, paid in whole or in part for certain expenditures which are generally regarded as municipal expenditures, but which had theretofore been paid by Santa Catalina Island Company.

Referring now to allowances for depreciation, Wilmington Transportation Company set up no allowance in 1911 and 1912, but set aside $20,100.00 during each of the years 1913 and 1914. Mr. Paul Thelen made an estimate, which was accepted by Wilmington Transportation Company, of $10,021.43 as a proper annual allowance for depreciation.

As already indicated, Wilmington Transportation Company has been under contract with Santa Catalina Island Company to pay to Santa Catalina Island Company each year 80 per cent of the company's net earnings, after deducting in addition to Wilmington Transportation Company's own operating and maintenance expenses, such amounts as Santa Catalina Island Company should expend for "advertising said island and the different resorts thereon as places of resort and recreation; in furnishing suitable attractions and amusements thereon; in operating and maintaining the garbage plant at Avalon; in maintaining the golf course and golf club at Avalon; and in sprinkling, cleaning and electric lighting the streets and public places in Avalon." These provisions are contained in contract dated February 1, 1904, between Wilmington Transportation Company and Santa Catalina Island Company, introduced as defendant's Exhibit "A" in this pro-

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ceeding. This contract expired by limitation on February 1, 1914, but Wilmington Transportation Company and Santa Catalina Island Company have continued to abide by its terms in the same manner as though the contract were still in effect.

The following table shows passenger and freight earnings and expenses, depreciation, earnings after depreciation, 80 per cent payment to Santa Catalina Island Company and the net profit of Wilmington Transportation Company from its public utility business for the years ending December 31, 1911, 1912, 1913 and 1914, and the total for the four years:

TABLE IV.

Earnings and Expenses—1911, 1912, 1913 and 1914—Wilmington Transportation Company.

Item	1911	1912	1913	1914	Total
Passenger and freight earnings	$274,731 68	$258,732 07	$237,688 42	$155,008 52	$926,160 69
Passenger and freight expenses	139,493 33	157,553 62	141,537 54	110,303 37	548,887 86
Earnings over expenses	$135,238 35	$101,178 45	$96,150 88	$44,705 15	$377,272 83
Less depreciation	10,021 43	10,021 43	10,021 43	10,021 43	40,085 72
Earnings after depreciation	$125,216 92	$91,157 02	$86,129 45	$34,683 72	$337,187 11
Less 80 per cent to Santa Catalina Island Company	100,173 53	72,925 62	68,903 56	27,746 98	269,749 69
Net profit	$25,043 39	$18,231 40	$17,225 89	$6,936 74	$67,437 42

The 80 per cent payments to Santa Catalina Island Company shown in the foregoing table do not correspond with the actual payments reported by Mr. Hughes as appearing on the books of Wilmington Transportation Company, for a number of reasons, including the item for the operation of Captain Banning's yacht, and also the fact that proper allowances for depreciation have not heretofore appeared on the books of Wilmington Transportation Company.

From Table IV it appears that the total net profit of Wilmington Transportation Company from its operations during the years 1911 to 1914, inclusive, after making the 80 per cent payment to Santa Catalina Island Company, was $67,437.42, or an average of $16,859.35. This net profit amounts to a return of $6\frac{1}{10}$ per cent on the estimated depreciated reproduction cost of $273,853.63.

If nothing further appeared in this case, I have no doubt it would be generally admitted that the rates of Wilmington Transportation Company have not yielded an excessive return. Complainants herein, however, urge that Wilmington Transportation Company should not be allowed to pay to Santa Catalina Island Company the 80 per cent of its net profits hereinbefore referred to, in which event it would appear that Wilmington Tronsportation Company is making a very large return.

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It accordingly becomes necessary to give consideration to the position of complainants with reference to said payment by Wilmington Transportation Company to Santa Catalina Island Company. It is urged by complainants that such payment by Wilmington Transportation Company is *ultra vires,* and in any event is excessive. The articles of incorporation of Wilmington Transportation Company give to the company the right to carry on "a general transportation, towing, lightering, storing, wharfage and warehouse business." Under the power to carry on a general transportation business, Wilmington Transportation Company would certainly have the right to establish the necessary terminals and also to do whatever is necessary as an incident to the transportation business to insure its success. Unless the island of Santa Catalina and the town of Avalon are maintained as desirable pleasure and health resorts, there would be but little business for Wilmington Transportation Company. What Wilmington Transportation Company has the right itself to do under its articles of incorporation, it certainly has the right to cause to be done in its behalf by its agent, the Santa Catalina Island Company. I am convinced that Wilmington Transportation Company is entitled to credit as operating expenses whatever moneys are properly and reasonably expended by or on behalf of Wilmington Transportation Company in maintaining those portions of the island of Santa Catalina which are used by and for the public. If any of the payments made by Wilmington Transportation Company have been technically *ultra vires,* the defect can be easily cured for the future by an amendment to the company's articles of incorporation.

It now becomes necessary to consider the operations of Santa Catalina Island Company in connection with the company's service to or for the public, to ascertain whether the payments made by Wilmington Transportation Company have been excessive.

In Railroad Commission's Exhibit No. 4, Mr. Paul Thelen reports that to reproduce new the property of Santa Catalina Island Company directly used and useful in connection with the attractions and facilities which Santa Catalina Island Company offers its patrons and those of Wilmington Transportation Company in Avalon, together with improvements on the island, but excluding all land values outside of Avalon, would cost a sum in excess of $1,800,000.00, and that the depreciated cost to reproduce this property would be a sum in excess of $1,200,000.00. The principal items entering into the improvements which are used and useful in the public service are—amphitheatre and band stand, aquarium building and equipment, bath house and equipment, Canvas City, cottages, electric plant, fresh water system, freight house, golf club, Island Villa, Island Villa Hotel, Isthmus and Howlands, Metropole Hotel and equipment, pavilion, roads, reservoir, sewer system, street lighting, shops and warehouse. The real estate allowed in the foregoing

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computation consists of only those parcels of real property in the town of Avalon which are actually used in connection with the attractions and facilities which the Santa Catalina Island Company offers to its patrons and those of Wilmington Transportation Company.

Santa Catalina Island Company derives no operating revenue except from its rentals in Avalon and its attractions on Santa Catalina Island. The following table is a summarized statement of the operating and other revenues and the operating expenses of Santa Catalina Island Company from October 27, 1902, to December 31, 1914, including the amounts actually paid by Wilmington Transportation Company under its contract providing for the payment of 80 per cent of net profits:

TABLE V.

Summarized Statement of Revenues and Expenses from October 27, 1902, to December 31, 1914. Santa Catalina Island Company.

Period	Operating revenues of Santa Catalina Island Co.	80 per cent of profit of Wilmington Transportation Co.	Total revenues, Santa Catalina Island Co.	Operating expenses, including taxes, Santa Catalina Island Co.	Net revenue of Santa Catalina Island Co. before depreciation
Year to September 30, 1903	$278,856 65	----------	$278,856 65	$241,208 95	$37,647 70
Year to September 30, 1904	260,713 12	----------	260,713 12	249,434 38	11,278 74
Year to September 30, 1905	249,328 30	$56,621 79	305,950 09	223,403 58	82,546 51
Year to September 30, 1906	320,852 44	33,753 59	354,606 03	288,682 04	65,923 99
Year to September 30, 1907	340,610 61	125,472 34	466,082 95	319,488 54	146,594 41
Year to September 30, 1908	222,457 14	84,599 36	307,056 50	207,938 70	99,117 80
Year to September 30, 1909	234,709 75	117,397 96	352,104 71	225,239 35	126,865 36
Year to September 30, 1910	309,696 80	116,147 03	425,843 83	332,122 61	93,721 22
Three months to December 31, 1910	32,753 87	46,125 21	78,879 08	61,286 50	17,592 58
Year to December 31, 1911	322,573 86	127,769 10	450,342 96	338,611 03	111,731 93
Year to December 31, 1912	295,315 79	78,436 86	373,752 65	300,598 64	73,154 01
Year to December 31, 1913	249,012 70	69,247 89	311,260 59	240,578 98	70,681 61
Year to December 31, 1914	160,900 25	19,985 12	180,885 37	169,200 98	11,684 39
Totals	$3,277,778 28	$868,556 25	$4,146,334 53	$3,197,794 28	$948,540 25
Totals, last four years	$1,027,892 60	$288,438 97	$1,316,241 57	$1,048,980 63	$267,251 94

NOTE.—The column of operating expenses above includes some considerable amounts for "replacements," though not sufficient to equal an adequate allowance for depreciation.

Taking the last four years, it appears that Santa Catalina Island Company made a total profit, after receiving the 80 per cent payment from Wilmington Transportation Company, of $267,251.94, or an average of $66,812.98 per year. The estimated annual depreciation on the improvements of Santa Catalina Island Company is $27,257.00. A part of this amount is already included as replacements under the operating expenses shown in Table V. However, making no allowance whatsoever for depreciation, the average annual profit of $66,812.98 for the last four years would yield a return of between 5 per cent and 6 per cent on the sum of $1,200,000.00, being the estimated depreciated reproduction cost of that portion of the property of Santa Catalina Island

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Company which is used and useful in its service to the public. Such a return is by no means unreasonable.

I do not mean, by anything herein said, to pass on the question whether certain expenditures in connection with the town of Avalon which would normally be municipal expenditures should be paid by the town through taxation or should be paid by a private concern. This is a matter which the town of Avalon must solve for itself. However, even subtracting from the operating expenses of Santa Catalina Island Company and Wilmington Transportation Company the sums heretofore paid for police patrol, sewerage and the maintenance of streets and other public places and other usual municipal expenditures, the return received by Santa Catalina Island Company and Wilmington Transportation Company would still be far from unreasonable.

As already pointed out, Wilmington Transportation Company is subject to competition in the transportation of passengers on the part of vessels the fares of which are far less than those charged by Wilmington Transportation Company. Hence there is a means available by which the public, if it so desires, can travel between San Pedro and Avalon at rates materially less than those charged by Wilmington Transportation Company. It must be said, however, in this connection, that the service rendered by Wilmington Transportation Company is superior to that rendered by its competitors.

After a careful consideration of all the evidence in this case, I find that the rates now charged by Wilmington Transportation Company for the transportation of passengers and freight are not unjust or unreasonable. The complaint should be dismissed.

I submit the following form of order:

ORDER.

The above entitled proceeding having been submitted and being now ready for decision,

The Railroad Commission hereby finds as a fact that the rates now charged by Wilmington Transportation Company for the transportation of passengers and freight between San Pedro and Avalon are not unjust or unreasonable rates.

Basing its order upon the foregoing finding of fact and on the other findings of fact which are contained in the opinion which precedes this order,

It is hereby ordered that the above entitled complaint be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of December, 1915.

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DECISION NO. 3020.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, AND THE CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY FOR AN ORDER AUTHORIZING THEM TO ENTER INTO AN AGREEMENT.

Application No. 2000.

Decided December 31, 1915.

The Atchison, Topeka and Santa Fe Railway Company and The California, Arizona and Santa Fe Railway Company apply jointly with the San Pedro, Los Angeles and Salt Lake Railroad Company for the approval of a certain agreement whereby the former companies permit the latter company to operate its trains over the tracks of the former companies from Daggett to a point near Riverside in consideration of the payment by the latter of a certain portion of taxes, maintenance charges, switching charges, etc., and an annual rental as specified in the agreement. Application granted.

J. E. Kelby, for San Pedro, Los Angeles and Salt Lake Railroad Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company and the California, Arizona and Santa Fe Railway Company.

REPORT OF THE COMMISSION.

GORDON, *Commissioner.*

This application was filed with the Commission on December 6, 1915, and looks to leasing certain facilities of The Atchison, Topeka and Santa Fe Railway Company and the California, Arizona and Santa Fe Railway Company to the San Pedro, Los Angeles and Salt Lake Railroad Company for a period of ninety-nine years from the first day of the calendar month following the approval of the agreement by the Commission. A copy of this agreement was filed with the application and exhibits were filed at the hearing, or before, which cover the detail of the matter.

The facilities herein sought to be leased are the main line track, and all appurtenances set forth at length in Exhibit "D" of the agreement, between Daggett and a point near Riverside, both in California. The facilities from Daggett to and including Barstow are owned by the California, Arizona and Santa Fe Railway Company and are leased to The Atchison, Topeka and Santa Fe Railway Company. The other facilities covered by the agreement are owned by the latter company. The Salt Lake company at the present time is using most of these facilities under a fifty-year lease which has been in existence about ten

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years and is now to be superseded by the lease under consideration herein, which grants to the Salt Lake company the right to use some additional facilities and gives that company a larger use of the facilities now used. The details of the lease and exhibits seem to be fairly complete and are in such form that it seems to be unnecessary to go into those details in the opinion, and reference is hereby specifically made, for those details, to the lease and agreement entitled "Secretary's Contract No. 13510. Between The Atchison, Topeka and Santa Fe Railway and the San Pedro, Los Angeles and Salt Lake Railroad Company. Agreement granting Salt Lake company use of Atchison company's tracks between Daggett and Riverside, California. Dated August 13, 1915," which was filed with the application and to The Atchison, Topeka and Santa Fe Railway Company's Exhibit No. 1 filed at the hearing. The exhibit covers especially the basic data on which the valuation figures agreed upon were secured.

The new lease grants to the Salt Lake company substantially equal rights with the Santa Fe company in the property in question, and in addition to covering the methods to be followed in dividing, between the companies, the payment of taxes, maintenance charges, switching charges at terminals, operating charges, etc., it requires the Salt Lake company to pay a monthly rental of one-twelfth (1/12) of one-half (½) of four and three-fourths per cent (4¾ per cent) on the agreed valuation of six million eight hundred sixty-two thousand and eight hundred eighty-one and 12-100 dollars ($6,862,881.12).

The representatives of the applicants laid much stress on the contention that this figure does not represent the value of the property covered for any purpose, other than as a basis for rental in this case; that it is a compromise figure only and represents the largest sum upon which the Salt Lake company would pay rental interest and the smallest the Santa Fe company would accept. When the renewal of the lease was first under consideration, it appears from the testimony, the local officials of the Santa Fe company sought to have the rental basis rest upon a value arrived at by a complete physical appraisal and that work was started along the same lines as the appraisals which have been made by the Santa Fe company and submitted to this Commission for other portions of the Santa Fe system. Before it was completed, however, the presidents of the Santa Fe and Salt Lake agreed to use as a basis for future rental the valuation on which the present rental is paid and which, in the opinion of the local officials of the Santa Fe, does not represent the true value of the property involved.

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The figures finally agreed upon and submitted to the Commission were derived as follows:

The original appraisement of the line from Colton to Daggett, as agreed upon in the former contract, dated April 26, 1905, which is superseded by the contract under consideration	$2,168,106 07
Additions and betterments charged to capital account by The Atchison, Topeka and Santa Fe Railway Company from April 26, 1905, to September 30, 1915	3,898,387 40
Amounts expended by The Atchison, Topeka and Santa Fe Railway Company from April 26, 1905, to September 30, 1915, which the representatives of the applicants agreed are properly chargeable to additions and betterments under the rulings of the Interstate Commerce Commission, which, under the system of accounting used by the Santa Fe in past years were charged to operating expenses	108,167 34
Additional facilities on the line from Colton to Daggett of which the Salt Lake Company will have the joint use under the new contract, but which they were not privileged to use under the old contract	338,272 21
Valuation of the line from Riverside Junction to Colton, which comes under the new contract, but which did not come within the old contract	349,948 10
Total	$6,862,881 12

One of the principal factors which brought about the agreement of the two companies to this figure is the fact that the Salt Lake company has made surveys and estimates of the cost of building its own line from Daggett to Riverside, and has found that it can do this work at a cost of about $4,000,000.00, so this figure necessarily limited the amount of rental that the Salt Lake company was willing to pay and the Santa Fe could secure.

It is apparent that an expenditure of $4,000,000.00 for additional railroad facilities, through the desert and mountainous country traversed, for the most part, between Daggett and Riverside, would be an economic waste when it would result in a single-track line which would not be used to full capacity and which would be practically parallel to a partially double tracked railroad, which is amply able to take care of the traffic of both roads for years to come. Under this agreement the interest, taxes and operating and maintenance charges will be lower to both companies than if the Salt Lake company were to build its own line and the agreement as submitted seems to me to be, for that reason, advantageous to the public as well as to the applicant companies.

I believe the application should be granted and recommend the following form of order:

ORDER.

The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and the California,

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Arizona and Santa Fe Railway Company, having applied to the Commission for authority to enter into a certain agreement attached to the application, and more specifically referred to in the foregoing opinion, and a public hearing having been held, and there appearing to be no reason why this application should not be granted,

It is hereby ordered that this application be and the same is hereby granted upon the condition that this Commission, or other competent public authority, shall at all times have the right to revise or alter any or all terms and provisions of said agreement.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of December, 1915.

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GRADE CROSSINGS.

Decision No.	Application No.	Name	Location	Action	Date
2728	1765	City of Venice	Venice	Granted	Sept. 1, 1915
2729	1786	Pacific Electric Railway Co.	Los Angeles	Granted	Sept. 1, 1915
2730	1840	Fresno Interurban Railway Co.	Fresno County	Granted	Sept. 1, 1915
2741	1862	Southern Pacific Co.	Gordon	Granted	Sept. 4, 1915
2753	1867	Southern Pacific Co.	Galt	Granted	Sept. 15, 1915
2757	1877	Southern Pacific Co.	San Francisco	Granted	Sept. 17, 1915
2766	1653	Northern Electric Railway Co.	Sacramento	Granted	Sept. 18, 1915
2800	1882	Pacific Electric Railway Co.	Hawthorne	Granted	Sept. 30, 1915
2809	1895	Pacific Electric Railway Co.	Riverside Co.	Granted	Oct. 5, 1915
2810	1892	Southern Pacific Co.	Woodland	Granted	Oct. 5, 1915
2811	1894	Southern Pacific Co.	Salida	Granted	Oct. 5, 1915
2812	1893	Southern Pacific Co.	Woodbridge	Granted	Oct. 5, 1915
2813	1891	Southern Pacific Co.	Visalia	Granted	Oct. 5, 1915
2814	765	City of Hermosa Beach	Hermosa Beach	Granted	Oct. 5, 1915
2823	1294	Sacramento & Woodland R. R. Co.	Woodland	Dismissed	Oct. 9, 1915
2826	1910	San Pedro, L. A. & Salt Lake R. R.	Los Angeles	Granted	Oct. 16, 1915
2834	1911	Pacific Electric Railway Co.	Corona	Granted	Oct. 22, 1915
2835	1912	Southern Pacific Co.	Stockton	Granted	Oct. 22, 1915
2839	1914	Arcata & Mad River Railroad Co.	Arcata	Granted	Oct. 23, 1915
2840	1924	Southern Pacific Co.	Walnut Grove	Granted	Oct. 23, 1915
2853	1931	Pacific Electric Railway Co.	San Bernardino Co.	Granted	Oct. 29, 1915
2854	1934	Southern Pacific Co.	Visalia	Granted	Oct. 29, 1915
2855	1935	Northwestern Pacific R. R. Co.	Arcata	Granted	Oct. 29, 1915
2860	1670	County of Fresno	Herndon	Granted	Oct. 30, 1915
2861	1917	City of San Diego	San Diego	Granted	Oct. 30, 1915
2862	1909	So. San Francisco R. R. & Power Co.	So. San Francisco	Granted	Oct. 30, 1915
2877	1884	Dept. of Eng. State of Cal.	Siskiyou Co.	Granted	Nov. 5, 1915
2878	1902	County of Sacramento	Elvas	Granted	Nov. 5, 1915
2888	1927	County of Los Angeles	Los Angeles Co.	Granted	Nov. 9, 1915
2889	1945	Southern Pacific Co.	Porterville	Granted	Nov. 9, 1915
2890	1947	San Jose Railroads	Santa Clara Co.	Granted	Nov. 9, 1915
2894	1880	Dept. of Eng. State of Cal.	Castaic	Granted	Nov. 11, 1915
2919	1628	Dept. of Eng. State of Cal.	San Diego Co.	Granted	Nov. 20, 1915
2920	1956	County of San Bernardino	Hector	Granted	Nov. 20, 1915
2933	1946	Pacific Electric Railway Co.	Los Angeles	Granted	Nov. 26, 1915
2934	1969	Southern Pacific Co.	Strathmore	Granted	Nov. 26, 1915
2935	1973	Southern Pacific Co.	Clotho	Granted	Nov. 26, 1915
2936	1968	Southern Pacific Co.	City of Tulare	Granted	Nov. 27, 1915
2945	1976	Atchison, Topeka & Santa Fe Ry. Co.	Los Angeles	Granted	Nov. 30, 1915
2948	1980	Southern Pacific Co.	Calipatria	Granted	Dec. 2, 1915
2949	2003	Southern Pacific Co.	Imperial	Granted	Dec. 11, 1915
2974	2004	Atchison, Topeka & Santa Fe Ry. Co.	Richmond	Granted	Dec. 15, 1915
2998	2012	Southern Pacific Co.	Huron	Granted	Dec. 24, 1915
3003	2015	Patterson & Western R. R. Co.	Stanislaus Co.	Granted	Dec. 24, 1915
3014	1672	Town St. Helena	St. Helena	Dismissed	Dec. 30, 1915
3015	2022	Southern Pacific Co.	San Francisco	Granted	Dec. 30, 1915
3016	2021	Southern Pacific Co.	Roche	Granted	Dec. 30, 1915

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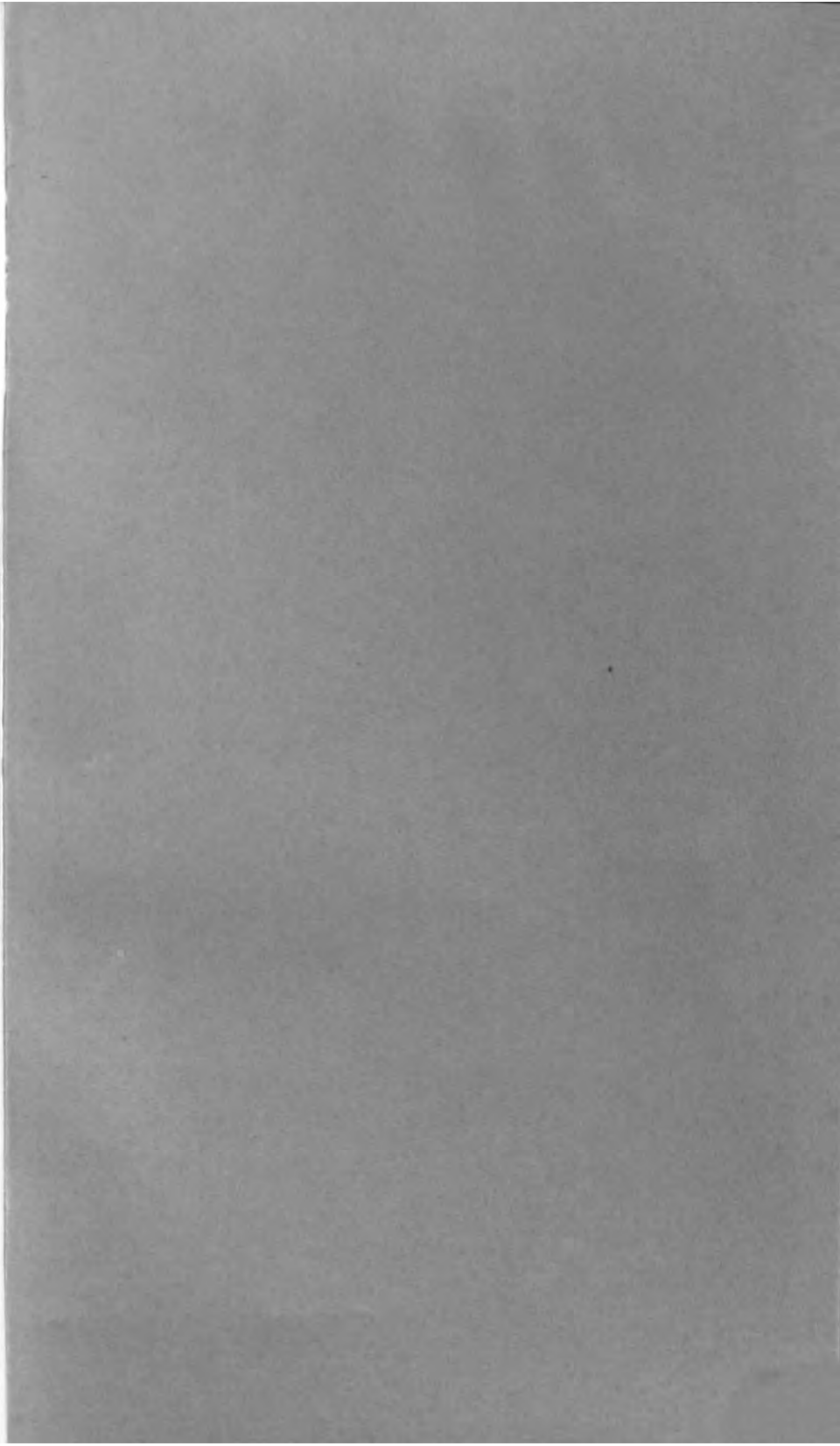

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